

1988

Richard K. Crandall: Brief of Appellant

Utah Supreme Court

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Recommended Citation

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DOCKET NO:

UTAH SUPREME COURT.

BRIEF

880325

IN THE SUPREME COURT FOR THE STATE OF UTAH

In Re:

RICHARD K. CRANDALL

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Case No. 88-0325

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BRIEF OF APPELLANT

APPEAL FROM ORDER OF DISCIPLINE (DISBARMENT)
OF THE UTAH STATE BAR ASSOCIATION

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Case No. 88-0325

BRIEF OF APPELLANT

STATEMENT OF THE ISSUES

The issues presented in this case are as follows:

- (a) Did Respondent improperly default Appellant resulting in the facts as alleged in the Complaints in these matters being improperly deemed as being admitted by Appellant?
- (b) Did Respondent fail to give Appellant proper notice of the disciplinary Hearing in these matters?
- (c) Did Respondent fail to give Appellant proper notice of the Findings of Fact and Conclusions of Law of the Hearing Panel in these matters, thus denying Appellant's right to make his objection to the Bar Commission prior to the submission of its Recommendation to this Court?
- (d) Should Respondent be estopped from asserting jurisdiction to discipline Appellant after having dropped Appellant from the rolls of attorneys

licensed to practice law in the State of Utah and after having refused to re-enroll Appellant after his dues were properly tendered?

- (e) Did Respondent deny Appellant his right to counsel by (i) withholding and refusing to serve notice upon counsel of pending disciplinary matters against Appellant, (ii) subsequently improperly requesting the withdrawal of counsel, and (iii) refusing Appellant's request for a short continuance to obtain new counsel?
- (f) Was Respondent denied his right to appeal in F-239, F-276 by the premature entry of this Courts Order of Discipline nineteen days after it was filed with this court in direct contravention of Section 78-51-16, Utah Code Annotated, 1953, as amended?
- (g) Were Bar Counsels direct misrepresentations or omissions of material facts made to the Hearing Panel evidence bad faith and unfairness so as to deny Appellant his right to due process?
- (i) Are all of the above taken together sufficient to find unfairness in the proceedings upon which the recommendation of disbarment is based?

STATEMENT OF THE CASE

This is an Appeal from a Recommendation of Discipline: Disbarment in Formal Complaints F-300, F-307, and F-311, entered and filed with this court on or about September 6, 1988, by the Board of Bar Commissioners of the Utah State Bar Association.

The Recommendation repeatedly refers to and relies upon all prior Disciplinary matter against Appellant, namely F-202, F-239, and F-276 and Appellant will also address those matters in his brief.

STATEMENT OF FACTS

Appellant Richard K. Crandall, hereinafter referred to as "Mr. Crandall" or "Crandall," was admitted to practice law in the State of Utah in February of 1976. In May of 1986 Crandall was engaged in the practice of law as a solo practitioner specializing in contested divorce cases. Mr. Crandall had offices at 350 South 400 East, Suite 114, Salt Lake City, Utah. (See Appendix II, Affidavit of R. Crandall).

In May, 1987, Crandall had approximately 100 open and active matters involving daily court appearances, weekly trials and the continuous filing of pleadings. Including divorce complaints, orders to show cause, restraining orders, etc. (See Appendix II, Affidavit of R. Crandall)

Since being admitted to the Bar in 1976, Mr. Crandall has been the subject of six bar complaints: F-202, F-239, F-276,

F-300, F-307 and F-311. All six of which Complaints are specifically and repeatedly referred to in the Recommendation presently under appeal. (R. pp.74, 124-125, 169, 173-174) The Complaint in F-202 had been completed shortly before April of 1987. In F-202, Mr. Crandall was placed on a supervised probation and was ordered to file monthly reports on his current files. The first report was due sometime in the later part of May, 1987. (Appendix II, Affidavit R. Crandall)

On May 15, 1987, Mr. Crandall received a letter from the Utah State Bar stating that he had been dropped from the rolls of attorneys authorized to practice law for failure to tender his 1987 annual dues. (See Addendum II p. 1). Upon receipt of this letter, Mr. Crandall initially contacted his bookkeeper and inquired why his dues had not been paid. Crandall's bookkeeper stated that he had just recently tendered his dues. Mr. Crandall then called Mr. Steven Hutchinson and informed Mr. Hutchinson, the Executive Director of the Bar that it was Crandall's understanding that the dues had been tendered by his bookkeeper. Mr. Hutchinson explained that they would check the records and see if in fact mislaid the check or if there was some misunderstanding. (See Addendum II, Affidavit of Richard K. Crandall.

There was no discussion regarding Mr. Crandall's ability to handle his pending matters while the dues problem was resolved. Approximately two or three days later Mr. Crandall left town on a scheduled vacation to extend over the Memorial Day weekend. Upon his return from vacation Mr. Crandall was informed by his secretary and his court runner that several pleadings Mr. Crandall had left for filing had been rejected by the courts upon instructions from the Utah State Bar Association. Mr. Crandall immediately telephoned the Clerk of the Third District Court who stated that they had received a list of attorneys who had been dropped from the rolls of attorneys authorized to practice law in the State of Utah and had been specifically instructed by the Bar Association not to accept pleadings from the listed attorneys. (See, Addendum II, Affidavit of R.K. Crandall)

Mr. Crandall immediately contacted the Bar Association, discovered that Mr. Hutchinson was out of town, and asked to speak to Bar Counsel. Mr. Crandall explained to Bar Counsel that it was his understanding that his dues had been tendered. Bar Counsel explained that they had not been located. Crandall then offered to immediately tender said dues. Bar Counsel stated that under the new policies adopted by the Bar Commission the matter would have to be presented to the Executive Committee of the Bar Association together with a written petition for reinstatement. (Appendix II p. 2) Crandall asked when the next Executive

Committee meeting was to be held and was informed it was sometime in the later part of June. Mr. Crandall explained that he had many court appearances in the interim and actually reviewed his coming calendar with Bar Counsel. Bar Counsel explained that there was nothing that could be done under the Rules. Mr. Crandall explained that it would create all kinds of chaos with his clients. The only response offered by Bar Counsel was to take another vacation. (See, Appendix II, Affidavit of R.Crandall).

Mr. Crandall immediately obtained continuances of those most immediate hearings and explained to clients about his suspension. Mr. Crandall was told by the Utah Bar Admissions Secretary that the tendering of dues was a mechanical matter and there should be no problem on his reinstatement as soon as the Executive Committee met. Before the next scheduled Executive Committee meeting, Mr. Crandall tendered the payment of his dues together with the photocopy of the check originally tendered, a written petition and letter of explanation from his bookkeeper. (Appendix II, Affidavit R. Crandall).

On or about July 9, 1987, Mr. Crandall received a letter from Julie Smiley, the Admissions Secretary of the Bar Association stating that the Executive Committee had referred his petition for reinstatement to the entire Commission and that the Commission would meet on or about July 31. (Appendix II, p. 3)

Immediately thereafter, Crandall's secretary called in sick and never returned to work. Mr. Crandall immediately contacted all clients that had all matters pending prior to July 31, 1987, and explained that he was still under administrative suspension. At this point Crandall's practice became chaotic. Many clients were asking were asking for full refunds even though the fees were earned and the client actually owed Mr. Crandall money. (Appendix II, Affidavit R. Crandall)

On August 5, 1987, Mr. Crandall received another letter from the Bar Association stating without further explanation that the matter had been deferred to the next Bar Commission meeting at the end of August, 1987. (Appendix II, p.4). Several days later, Mr. Crandall received an Order to Show Cause in F-202 requiring him to appear and show cause why his probation should not be revoked for failing to file status reports on his cases, all of which status reports were due after his dues suspension. (Appendix II, p. 5).

Said Order to Show Cause was scheduled for August 21, 1987. Although he was losing cases on a daily basis and his practice was in chaos, Mr. Crandall completed a case summary and submitted it to his supervisor Joseph Palmer sometime in the middle of August and prior to the hearing on the Order to Show Cause. (Appendix II, Affidavit R. Crandall).

On August 15, 1987, a creditor of Crandall's who was aware that his practice was in chaos and without notice to Mr. Crandall entered his premises and repossessed all of his office furniture, and equipment. Sometime in August Crandall's automobile was repossessed. (Appendix, Affidavit R. Crandall).

On August 21, 1987, Mr. Crandall appeared before the hearing panel in F-202, together with his Attorney, Bruce Cohne, to show cause why his probation in F-202 should not be revoked because he had failed to file monthly reports. Appearing as Associate Bar Counsel was Christine Burdick. At this hearing Mr. Crandall became emotional and tearfully stated to Ms. Burdick, (i) that his life was in a state of chaos, (ii) that the dues suspension had ruined his law practice, and (iii) that he was so overwhelmed by the effects of the dues suspension that he literally hadn't had the time or ability to summarize client files that he was frantically referring other counsel. (Appendix II, Affidavit R. Crandall)

Mr. Crandall stated directly to Ms. Burdick, that he felt the Bar had wrongfully delayed consideration of his tendering of dues and that this was in violation of the Bar's Procedures of Discipline. The panel recommended suspension for six months retroactive to the time of the dues suspension on May 1, 1987, and terminating on November 4, 1987. The Recommendation of the Hearing Panel in F-202 that Crandall should file a

business plan demonstrating an "ability to reengage in the practice of law" (R.33) was clearly based on the fact that Crandall had been completely driven from his practice by the dues suspension. Mr. Cohne volunteered to supervise Crandall's probation in F-202. Bar Counsel approved of Mr. Cohne as supervisor without comment. Further, at this hearing Bar Counsel mentioned nothing about there being any other formal or informal disciplinary matters pending against Mr. Crandall. (Appendix II, Affidavit R. Crandall).

On or about October 18, 1987, Mr. Cohne withdrew as counsel for Mr. Crandall at specific the request of Bar Counsel. Immediately upon the withdrawal of Mr. Cohne, and with less than ten days notice to Mr. Crandall, Bar Counsel scheduled disciplinary hearings in F-239 and F-276 for November 2, 1987. Having just received the Notice of Hearing on the afternoon before or the morning of the hearing, Mr. Crandall called Bar Counsel Ms. Burdick and asked about the nature of the Hearing. Bar Counsel stated to Mr. Crandall that it was a Hearing to recommend discipline in F-239 and F-276. She further stated that she intended to request a one year suspension on each matter. (Appendix II, Affidavit R. Crandall).

Mr. Crandall told Associate Bar Counsel Burdick that he had just received the notice of the Hearing and notice that Mr. Cohne, his attorney, had withdrawn as his counsel. He then asked

Bar Counsel to continue the matter for a few days to allow him time to get a new lawyer and prepare for the hearing. Bar Counsel refused, stating that she would not continue the hearing since the screening panel had been notified and that it was difficult finding a date when they all could appear and that it was too late to change the date. Mr. Crandall stated that he would call the members of panel himself and get a new date as quickly as possible and stated to Bar Counsel that given the purposed recommendation, he felt his request was not unreasonable. Bar Counsel's response was that she had just sent Mr. Crandall a letter giving him notice of an informal complaint she had received from John Clay, (R. 284) and that she intended to seek disbarment on that matter. Mr. Crandall then asked Bar Counsel to at least present his request for a continuance because he was without transportation (R. 215) and needed time to obtain new counsel. The conversation was terminated with Bar Counsel refusing all of Crandall's requests. Contrary to repeated representations made by Ms. Burdick to the Hearing Panel in this matter (R. 228-229), this was the only conversation Mr. Crandall has ever had with Ms. Burdick, except during his appearance at the F-202 Show Cause Hearing in F-202 as set forth above. The Findings of Fact and Conclusions of Law and Recommendation of the Hearing Panel in F-239 and F-276 were mailed to Crandall on December 2, 1987, ten days after they had already been considered

by the Board of Bar Commissioners. (Appendix II, p.6-7). On December 2, 1987, the Board of Bar Commissioners entered their Recommendations for Discipline in F-239 and F-276 and transmitted these Recommendations to this Court on that date. (Appendix II, pp. 6-7). The files and records of this Court disclose that a hearing on these matters was scheduled on December 21, 1987. The files and records of this Court further reflect that Bar Counsel, Jo Carol Nasset-Sale was given notice of this hearing but no such notice was sent to Mr. Crandall. On December 21, 1987, this Court entered it's Order of Discipline in F-202, F-239 and F-276, only nineteen days after they were submitted to this Court. (R. pp. 32-43) The Order of Discipline in F-276 was mailed to one Stanley S. Adams at an address unfamiliar to Crandall. (Appendix II, p. 8) The Orders of Discipline in F-202 and F-239 were mailed to Crandall at 547 West 3900 South, Salt Lake City, Utah, and was returned undelivered. (Appendix II, p. 9-10) Mr. Crandall never received this Court's Orders in F-202, F-239 or F-276. The first notice Mr. Crandall received of the discipline imposed in these matters was provided by a fellow attorney who gave Mr. Crandall a copy of the notice published in the February

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or March, 1988, Bar Association Newsletter. At this time Mr. Crandall was without employment and he was in bankruptcy.

Next, the Summons and Complaint in F-300 was mailed by Certified Mail to Crandall at 547 West 3900 South, Salt Lake City, Utah, on November 17, 1987, and was signed for by someone other than Crandall (R. 1-5) and was not received by Crandall.

The Summonses and Complaints in F-307 and F-311 were mailed on or about March 3, 1988, to the 547 West 3900 South Address. These Summonses and Complaints were returned to Respondent undelivered.(R. 84, 135).

On March 31, 1988, Constable Betty Bates personally served the Summonses and Complaints in F-307 and F-311 upon Mr. Crandall (R. 16-17). On April 4, 1988, only four days after the personal service of the Summonses and Complaints in F-307 and F-311 Respondent entered Crandall's defaults in these matters (R. 87) Bar Counsel's Motion to Consolidate, Memorandum in Support of Motion to Consolidate, and the Order of Consolidation were all mailed by regular mail to 547 West 3900 South, Salt Lake City, Utah, and not received by Crandall (R. 26-43).

As is clearly evident from Paragraph 1 of the Findings of Fact, Conclusions of Law and Recommendation of Discipline of the Hearing Panel (R. 45-62), that Respondent relies on this personal service as it's notice of service upon Crandall of the Complaints in F-307 and F-311.

Respondent received the service return showing actual personal service upon Crandall on March 31, 1988. Respondent also knew that Crandall had not received the Summons and Complaints that were previously mailed to Crandall at the 547 West 3900 South address because Respondent's Certified Mail was returned as undelivered. It should be noted that the Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Panel upon which the Bar Commission bases its recommendation, presumably prepared by Bar Counsel, are carefully worded. While specifically relying on the fact that Crandall was personally served in F-307 and F-311, the actual dates of service and the date Crandall's default was entered are omitted. By comparison, all other similar Findings of Fact and Conclusions of Law, prepared by the same Bar Counsel in prior proceedings instituted against Crandall, very specifically set forth dates of service and dates of default. If one merely modifies Paragraph 1 of the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Panel to include the date of service and default, the error becomes glaring.

On or about March 3, 1988, Respondent mailed a Notice of Hearing in F-300 to Crandall at 547 West 3900 South Address and it was returned undelivered (R. 12-13). On April 14, 1988, Respondent mailed Notices of Hearing in F-307 and F-311 to Crandall at the 547 West 3900 South address . Both of these

Notices of Hearing were returned undelivered. (R. 89-90, 140-141). On the face of the Notice in F-311, below Crandall's name, there is a hand written notation "3818 East Timberline Dr." (R. 142). This was Crandall's home address, which address had long been in the Bar Association's files. On May 6, 1987, Constable Bates served this Notice of Hearing, in F-311 only, on Crandall at his residence at 3818 East Timberline. (R. 144).

On July 11, 1988, the Findings of Fact, Conclusions of Law and Recommendation of the Hearing Panel were entered by the Hearing Panel (R. 62). On July 19, 1988, the Findings, Conclusions and Recommendation was mailed to Crandall at the 547 West 3900 South Address and again returned undelivered (R. 63). On August 15, 1988, the Board of Bar Commissioners entered it's Recommendation of Discipline based upon the Hearing Panel's Recommendation. However, the Commission specifically modified the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Panel to specifically provide in the Commission's Recommendations for restitution of \$15,000 in the prior F-276 disciplinary proceeding (R. 67-68).

On August 18, 1988, Constable Bates personally served Mr. Crandall with the Findings of Fact, Conclusions of Law and Recommendation of the Hearing Panel, not the Commission's Recommendation of Discipline, at his residence on Timberline Drive. (R. 71).

On August 22, 1988, Bar Counsel mailed a copy of the Recommendation of Discipline of Bar Commission addressed to Crandall at the 547 West 3900 South address. The Bar Commissions Recommendation of Discipline was also returned to the Respondent undelivered. (R. 73). Also, on August 22, 1988, Bar Counsel transmitted the Bar Commission's Recommendation to this Court.

On September 15, 1988, the Clerk of this Court mailed a letter addressed to Crandall at the 547 West 3900 South address advising him, among other things, that an appeal to the Recommendation of the Board of Bar Commissioners should be filed not later than September 21, 1988. This letter was returned undelivered. (See the files of this Court in this matter).

On October 7, 1988, the Clerk of this Court reviewed the file and mailed a certified copy of the Order of Disbarment addressed to Crandall at his residence at 3818 East Timberline Drive. This Order was received by Crandall on October 14, 1988 and Crandall filed this appeal on October 27, 1988 (R. 75).

SUMMARY OF ARGUMENTS

I. The Findings of Fact and conclusions of law and Recommendation of Discipline are not supported by the evidence presented to the Hearing Panel

A. Plaintiff's default was not duly entered and the facts of the complaints were improperly deemed admitted.

- B. Plaintiff was not given notice of the hearing in F-300 and F-307.
- C. The Hearing Panel in reaching its Recommendation as evidenced by the Sanctions Hearing transcript improperly relied upon misrepresentations of Bar Counsel.

II. From the time of Crandall's suspension for his alleged failure to timely tender his bar association dues until the filing of this Appeal, Mr. Crandall has been denied due process of law by the Respondent.

- A. Respondent unconstitutionally took Crandall's right to practice law from him.
- B. Respondent is estopped from imposing discipline upon Mr. Crandall after dropping Mr. Crandall from the roles of attorneys qualified to practice law in the State of Utah.
- C. Respondent cannot act as an independent tribunal after improperly taking Crandall's law practice from him.
- D. Plaintiff was denied due process of law in the F-239 and F-276 disciplinary matters and they should not be relied upon in reaching the Recommendation in these matters.

1. Mr. Crandall was denied the right to counsel in F-239 and F-276.
2. This Court's prematurely entered Orders in the disciplinary matters of F-202, F-239 and F-276 and thus denied Mr. Crandall his statutory right of review.
 - (a) This Court's Order in F-276 providing for \$15,000 restitution from Mr. Crandall is improper where the Hearing Panel recommended only \$1,500 in restitution and was accordingly improperly relied upon by the Hearing Panel in these matters.
 - (b) The Order of Discipline in F-239 and F-276 stating that two six month suspensions shall run consecutively and shall not commence until Crandall files a business plan demonstrating his ability to resume the practice of law is clearly arbitrary and capricious.

ARGUMENT

I.

THE FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND RECOMMENDATION OF DISCIPLINE ARE NOT
SUPPORTED BY THE EVIDENCE PRESENTED TO THE
HEARING PANEL.

- A. Plaintiff's default was not duly entered and the facts of the complaints were improperly deemed admitted.

As set forth above, the Summons and Complaint in F-300 was mailed by Certified Mail to Mr. Crandall at 547 West 3900 South, Salt Lake City, Utah, on November 17, 1987, and was signed for by someone other than Mr. Crandall's, and was not received by Crandall. (R. 1-5)

The Summonses and Complaints in F-307 and F-311 were mailed on or about March 3, 1988, to the 547 West 3900 South Address. These Summonses and Complaints were returned to Respondent undelivered. (R. 84, 135)

On March 31, 1988, Constable Betty Bates personally served the Summonses and Complaints in F-307 and F-311 upon Mr. Crandall. (R. 16-17) Despite the fact that the Summon's allows 20 days to file an Answer after service of the Summons and Complaint, April 4, 1988, only four days after the service of the Summonses and Complaints in F-307 and F-311 Respondent improperly entered Crandall's default (R. 87).

As is clearly evident from Paragraph 1 of the Findings of Fact, Conclusions of Law and Recommendation of Discipline of the Hearing Panel (R. 45-62), Respondent relies on this personal service as it's notice of service upon Crandall of the Complaints in F-307 and F-311. Respondent received the service return showing actual personal service upon Crandall on March 31, 1988. Respondent also knew that Crandall had not received the Summons and Complaints that were previously mailed to Crandall at the 547 West 3900 South address because Respondent's Certified Mail was returned as undelivered, entered Crandall's default four days later, but found at the at the Discipline Hearing that the defaults were duly entered, that Crandall had notice of the Hearing, which he did not, and deemed the allegations to be admitted and did not take evidence as to the merits of the claims. Respondent next mailed the Findings and Conclusions of the Hearing panel to the same address it knew Crandall had not be receiving mail. Then Respondent waited until **after** the Bar Commission had acted on the Findings and Conclusions of the Hearing Panel to personally serve the Findings and Conclusions of the Hearing Panel on Crandall but neglected to serve the Commission's recommendation of discipline on Crandall even though it had already been entered. The record clearly shows that Crandall did not have a fair opportunity to respond to the

allegations against him at any stage of these proceedings particularly at a time when he was without, employment, income transportation, office facilities, and was in a state of depression, having been previously placed out of business almost overnight without the Respondent affording him any hearing.

B. Plaintiff was not given notice of the Hearing in F-307 and F-311.

The record shows that Notices of Hearing which scheduled the Hearing held on May 17, 1987 in F-300, F-307 (the most serious matter) and F-311 were first mailed by certified mail to Crandall at the 547 West 3900 South address and were all returned undelivered. (R. 12-13) On May 6, 1987, Bar Counsel delivered only the Notice of the Hearing in F-311 to Constable Bates for service on Crandall. This Notice, in F-311 only, was personally served on Crandall at his 3818 East Timberline Residence on May 6, 1987. Contrary to Bar Counsel's statement to the Hearing Panel (R. 183), the notices of the Hearings in F-300 and F-307 were never served on Crandall. On May 10, 1987, an Order of Consolidation was entered in F-311, consolidating F-300, F-307, and F-311 for the purposes of hearing. This Order was mailed on May 10, 1987, to Crandall at the 547 West 3900 South address and returned undelivered. (R. 24-25) Even if this mailed Order of Consolidation was received, which it was not, it would

have given Crandall only four days notice of the hearing in which all of the 300 Series cases were to be heard.

Further, Bar Counsel's seemingly awkward wording of paragraph two of the Findings of Fact and Conclusions of Law of the Hearing Panel in F-300, F-307, F-311, stating that Crandall "was personally served with notice of hearing" but omitting any modifier to the word "hearing" such as "this hearing" or "the hearing in these matters" almost suggests an intention to mislead when viewed against the actual facts. In any event, Crandall was only served with a Notice of the Hearing in F-311.

Second, the form of the Notice used by Respondent completely fails to state in any way the purpose of the Hearing. Sufficiency of the form of notice is an objective, not a subjective question. The form of the notice on its face must be sufficient. See, Mullane v. Central Hanover Bank and Trust, Co., 339 U.S. 300 (1950).

II.

FROM THE TIME OF CRANDALL'S SUSPENSION FOR ALLEGED FAILURE TO TIMELY TENDER HIS BAR ASSOCIATION DUES UNTIL THE FILING OF THIS APPEAL, MR. CRANDALL HAS BEEN DENIED DUE PROCESS OF LAW BY THE RESPONDENT.

A. Conduct of Respondent is an unconstitutional taking of Crandall's right to practice law.

The right and privilege to practice law is protected by the Constitution of the United States. The Courts have long recognized that those individuals seeking the privilege to

practice law are in a different class than those who have been extended the right to practice and are actively engaged in the practice of law. The requirements of due process differ as to these two classes. In Re McCune 717 P.2d 701, 709, (Utah 1986) and the Appendix to the Rules of the Utah Supreme listing the priority of hearings before this Court.

In short, once the privilege to practice law is granted, that right can be taken away only by this Court, and then only after a full and fair hearing complying with the requirements of due process. Accordingly, this Court has delegated to the Bar Association only the power to investigate and make recommendations concerning discipline. It has never delegated the power to the Bar Association to take action "which affects a Lawyer's continued ability to practice law. Suspension or disbarment can be authorized only by the Supreme Court." In Re McCune, Supra, at page 709.

In total disregard of these principles, the Utah State Bar Association pursuant to Rule XX of the Procedures of Discipline dropped Crandall from the roll of attorneys authorized to practice law on May 1, 1987, for allegedly failing to timely tender his annual dues. After Crandall tendered his dues, Respondent, refused to re-enroll the Crandall and then repeatedly, and without explanation, delayed consideration of Crandall's petition for re-enrollment (Appendix II, pp. 3-4),

with full knowledge that Crandall was actively engaged in the practice of law, and that Crandall's practice and his clients were suffering irreparable harm. (Appendix II, Affidavit R. Crandall) Respondent's refusal to re-enroll Crandall was in direct opposition to the specific direction of Section 78-12-26, Utah Code Annotated 1953, as amended, and Rule 17, Rules of Integration and Management of the Utah State Bar.

After these repeated and unexplained delays, on September 1, 1987, the Bar Commission finally issued its formal refusal to re-enroll the Crandall, simply citing the "best interests of the public and the Bar Association." The Bar Commission was apparently relying upon the provisions of Rule XX found in the Procedures of Discipline and continued to ignore the specific language found in Section 78-51-26 and Rule 17 of the Rules of Integration and Management of the Bar.

Aside from any argument that Rule XX is unconstitutionally vague on its face, it was unconstitutionally applied to Crandall under the facts of this case. First, Respondent did not even comply with the plain language of Rule XX requiring the Bar Association to either order immediate re-enrollment upon receipt of Crandall's annual dues, or within thirty days notify the member that the Board of Bar Commissioners refused his dues. Secondly, and more importantly, Rule XX was unconstitutionally applied to Crandall who was actively engaged

in the practice of law and was clearly not within the classification for which the Rule was intended. If the Bar Association is concerned about disciplinary actions pending attorneys actively engaged in the practice of law, Rule VII(b)(1), et seq., not Rule XX of the Procedures of Discipline, provides for temporary suspension under appropriate circumstances, and contains the procedural safeguards necessary to protect the rights of the attorney, the interests of his existing clients, and the best interest of the public and Bar Association.

The first time Crandall was suspended from the practice of law by this Court, for any reason, was nearly eight months after Crandall's dues suspension on May 1, 1987, when, on December 21, 1987, this Court adopted the Recommendation of Discipline of the Board of Bar Commissioners in F-202, suspending Crandall for six months, retroactive to May 1, 1987. The six month suspension in F-202 was specifically scheduled to terminate on November 4, 1988. By the time this Court entered the Suspension Order, the period of suspension had already expired. The basis of this recommendation was that Crandall had failed to file monthly status reports on his files as required by the initial order in F-202. All such reports were due after Crandall was dropped from the rolls of attorneys authorized to practice law on May 1, 1987.

At the time of the "Administrative Suspension" on May 1, 1987, Crandall was a solo practitioner with a heavy case load of highly emotional and "fast track" domestic matters. Crandall had at the time many daily court appearances, and several trials per week as normally found in this type of practice. In very short order, after the "Administrative Suspension", Crandall's practice became chaotic. (Appendix, Affidavit of R. Crandall). By the time of the August 21, 1987 hearing in F-202 whereat Crandall was asked to show cause why he didn't file timely status reports in F-202, Crandall was completely out of business. He had lost all but a few clients, his office furniture had been repossessed, his office was closed, his secretary had quit and he was unemployed.

Crandall proffers that the transcript and the files in F-202, F-239 and F-276 will show that despite Crandall's direct statement to Bar Counsel at the August 21st hearing in F-202 that his practice and his life were in a state of chaos, Crandall was subsequently met with a series of disciplinary proceedings which were conducted in such a manner as to give Crandall minimal or no notice of the proceedings. By the time the F-300, F-307 and F-311 proceedings were commenced, Crandall was without employment, income, or transportation; his home was in foreclosure, he was in bankruptcy, and he was in a state of acute clinical depression. (Appendix, Affidavit of R. Crandall)

In short, the complete "taking" of Crandall's right and ability to continue the practice of law was in fact accomplished unilaterally by the Bar Association eight months before any disciplinary matters were ever considered by this Court.

B. Respondent is estopped from imposing discipline upon Crandall after dropping him from the roles of attorneys qualified to practice law in the State of Utah.

As evidenced from the Findings of Fact and Conclusions of Law of the Hearing Panel in these matters, all of the actions complained of occurred after Crandall was dropped from the rolls of attorneys authorized to practice law in the State of Utah for alleged failure to timely tender payment of bar dues. Specifically, paragraph 2 under the heading "Recommendation of Discipline, Aggravation," provides:

Respondent's continuing misconduct in these matters took place while he was on administrative and/or disciplinary suspension from the practice of law, such conduct again evidencing a serious lack of regard for the disciplinary process. (R. 59)

It is well established that when an attorney has been dropped from the rolls of those authorized to practice law, the Bar and this Court lose jurisdiction to impose discipline. This situation has most commonly been presented in cases where an attorney facing discipline attempts to resign his membership in the Bar Association, in an effort to oust the Bar and the Supreme Court of jurisdiction. The Courts, in considering this problem,

have long held that the Bar and the Court should not accept an attorney's resignation unless it is on conditions which are equivalent to the discipline which would **otherwise** be imposed. See ATTORNEYS AT LAW , 7 Am Jur 2d, & 27 p.81.

Similarly, in the case of Louisiana State Bar Asso. v. Powell, 195 So. 2nd 280 (LA 1976), the Supreme Court of Louisiana specifically held that an attorney facing discipline could not avoid discipline by intentionally failing to tender his dues, resulting in his being dropped from the roll of attorneys authorized to practice law, thereby ousting the Court of jurisdiction to impose discipline. The facts in the instant case, however, present the converse situation. That is, the Bar Association has formally refused to reinstate an attorney, Crandall, who was not under suspension or disbarment, after such attorney had tendered his dues, in direct contravention of Section 78-51-22, Utah Code Annotated, 1953, as amended, and Rule 17 of the Rules for Integration and Management of the Utah State Bar. Then the Bar, after refusing to accept the attorney's dues and thereby forcing him out of business, attempts to impose discipline on the attorney for alleged conduct arising after the Bar had refused to accept the tendered bar dues and re-enroll the attorney as a member of the Bar. For example, in the Sieden (F-311) and Sweeney (F-300) matters, the gravamen of both complaints is clearly Crandall's inability to conclude the legal matters

after he had been placed under dues suspension. The Ashworth matter (F-307) involved Crandall's failure to respond to Mr. Ashworth's attorney as to the whereabouts of certain documents after Crandall's office had been involuntarily closed by a creditor who repossessed all Crandall's furniture, files and equipment. The Clay matter (F-307) involves serious allegations of Crandall's misappropriation of trust funds, which Crandall denies, and Crandall's inability to repay personal loans, all arising after Crandall's law practice had been closed and he was in financial ruin. Having wrongfully created the absolute chaos that resulted from refusing to re-enroll Crandall to practice law for eight months where Crandall was under no order of suspension or disbarment, the Bar Association should be estopped from subsequently asserting jurisdiction over Crandall.

Further, the Utah Legislature has specifically stated that when an attorney has been suspended, disbarred or dropped from the rolls of attorneys licensed to practice law for failure to pay license fees, and continues to engage in the practice of law, the remedy is a civil proceeding as opposed to an administrative proceeding, with the attorney so accused having an absolute right to a trial by jury. See, Section 78-51-25, Utah Code Annotated, 1953, as amended.

C. Respondent cannot act as an independent tribunal after improperly taking Crandall's law practice from him.

As set forth above, the Bar Association clearly took from Crandall his right to practice law without due process of law. Long before this Court imposed discipline upon Crandall (December 21, 1987), he had lost his law practice, his automobile, his office furniture, files and equipment, his home was in foreclosure, he was insolvent and soon forced to file personal bankruptcy. Crandall respectfully asserts that Respondent's improper taking of his right to practice law clearly placed the Bar Commissioners and Bar Counsel individually, having acted beyond their jurisdiction, in a position where they may be liable to Crandall for damages under, among other things, 42 USC 1983, commonly known as the Civil Rights Act of 1964.

Further, Crandall proffers that the transcript of the Order to Show Cause Hearing in F-202 held on August 21, 1988, clearly shows that Crandall specifically placed Bar Counsel on notice of his claim that the Bar had wrongfully "destroyed his law practice". Accordingly, the Bar and its Commissioners, having rendered themselves liable to Crandall and having been placed on notice of Crandall's claim, could not act as an independent tribunal in these subsequent disciplinary matters. Therefore, Crandall was denied his right to be heard before an independent tribunal.

D. Plaintiff was denied due process of law in the F-239 and F-276 disciplinary matters and they are improperly relied upon in these matters.

1. Crandall was denied the right to counsel in F-239 and F-276.

On August 21, 1987, Crandall appeared together with his attorney, Bruce Cohne, at a hearing on a Show Cause Order in F-202. After deliberation, the hearing panel recommended a six month suspension retroactive to May 1, 1987 and terminating November 4, 1987. At this hearing Mr. Cohne volunteered to serve as Crandall's probation supervisor. Although Bar Counsel had apparently received the original complaints in McCormick (F-276), Ashworth (F-307) and Sweeney (F-300), no mention of these pending matters was made at that hearing. (Appendix, Affidavit of R. Crandall)

On September 1, 1987, despite Crandall having appeared at the Show Cause Hearing and Bar Counsel having made no mention of other disciplinary matters pending against Crandall, the Bar Commission, with the direct ex-parte input from Bar Counsel, formally refused to accept Crandall's tender of dues, thus permanently dropping Crandall from the rolls of attorneys authorized to practice law.

Thereafter, in the month of September, 1987, the Formal Complaint in F-276 was sent to Crandall at 547 West 3900 South, and signed for by someone other than Crandall. A notice of hearing on F-239 was sent to Crandall on September 22, 1987, and

a Notice of Default was entered in F-276. None of these documents were sent to Crandall's attorney, Bruce Cohne. On or about October 4, 1987, as evidenced by the minutes of the Bar Commission Meeting, the Bar Commission approved the Recommendation of the Hearing Panel in F-202 with the requirement that Mr. Cohne could elect to either to continue as Crandall's counsel or his probation supervisor. (Appendix II p. 11) On October 5, 1987, Bar Counsel wrote to Mr. Cohne stating that the Board of Bar Commissioners approved the Recommendation but required that Mr. Cohne withdraw as counsel. Further, as evidenced in the letter of October 5, 1987, no mention was made of any pending matters against Crandall. (Appendix II P. 12). Pursuant to Bar Counsel's request, Mr. Cohne withdrew as counsel to Crandall on or about October 18, 1987. On October 23, 1987, Bar Counsel noticed the Disciplinary Hearings in F-276 for November 2, 1987. Crandall did not receive this Notice or notice of Mr. Cohne's withdrawal until the day before the scheduled hearing. As set forth in detail in Crandall's affidavit, Crandall telephoned Bar Counsel asking that the hearing be continued. At the hearings on these matters, and referring to events during the month of August, 1987, Bar Counsel states as follows:

That brought about his suspension in F-202 and again, despite my request of the panel at that time that he be suspended for two years, they suspended him for six months and put him on probation again and assigned another probation officer to him, Mr. -- wouldn't you know that I'd forget his name.

MS. POLICH: Cohne.

MS. BURDICK: Yes. Thank you. -- Bruce Cohne to assist him in developing a business plan and presenting it to the Board of Bar Commissioners and again utterly failing to do so. Mr. Cohne withdrew. At that point the other two matters came up for hearing and the several suspensions were then ordered. (R. 190)

It is clear that not only did Bar Counsel effectively deny Crandall the right to Counsel in F-239 and F-236, but Bar Counsel in these proceedings by misrepresentation and omission of material facts made it appear to the Hearing Panel that Mr. Cohne's withdrawal was caused by Crandall's alleged uncooperative attitude. Further, it should be pointed out that subsequent to the Hearing Panels Recommendation in F-202 that Crandall file a business plan demonstrating his ability to re-engage in the practice of law, the Bar Commission permanently refused to accept the tender of his dues and the Hearing Panel in F-239 and F-276 recommended suspension totalling one year. It is respectfully submitted that it is arbitrary and capricious to cite Crandall for failure to file a business plan under F-202 when the Bar had no expectation of that Crandall would be resuming the practice of law for at least one year.

2. This Court's prematurely entered Orders in the disciplinary matters of F-202, F-239 and F-276, denied Crandall his statutory right of review.

For some unexplained reason and in direct abrogation of the rights guaranteed Crandall by the Utah Legislature, Crandall was denied his right to appeal by this Court entering it's Orders in F-239 and F-276 on December 21, 1987, more than ten days prior to the expiration of the time this Court should act on a Recommendation of Discipline by the Bar as provided by Utah law. Pursuant to Section 78-51-16, Utah Code Annotated 1953, as amended, Mr. Crandall had "the right to request a review of any order or recommendation of the Bar by the Supreme Court, provided he applies for such review within thirty days after the filing of such order or recommendation with the Supreme Court." This Court's premature entry of the Order cut short this right. This error was compounded by the fact that the Notices of the Recommendation of the Board of Bar Commissioners in F-239 and F-276 where mailed to Crandall at the 547 West 3900 South address and not received and the subsequent Notice of Entry of Order of Discipline of this Court was in the case of F-239 mis-mailed to one Stanley S. Adams and in the case of F-276 was again mailed to the 547 West 3900 South address, at which address mail was routinely returned undelivered. The only Notice received by Crandall of either the Recommendation of the Board of Bar Commissioners, or this Court's Order of Discipline in F-239 and

F-276, was from friends who has read the publication in the Utah Bar Newsletter.

3. This Court's Order in F-276 providing for \$15,000 restitution from Crandall is improper where the Hearing Panel recommended only \$1,500 in restitution and was accordingly improperly relied upon by the Hearing Panel in this matter.

Paragraph 2 of the Hearing Panel's Findings in this matter states that Crandall should pay all restitution orders previously entered in F-202, F-239 and F-276. If fact, there was no restitution involved in F-202 or F-239. In its' Recommendation to this Court, the Bar Commission modified this language to provide specifically and particularly for restitution in F-239 (sic, F-276) in the amount of \$15,000. The amount of Restitution in this matter was obviously significant to the Bar Commission. However, an examination of the original Findings of Fact, Conclusions of Law and Recommendation of Hearing Panel in F-276 discloses that the panel actually recommended that Crandall return a \$1500 retainer (See Appendix II, p. 13), which retainer was largely earned by Crandall having rendered legal services. In the Order of Discipline of this Court in F-276, however, the amount of restitution was erroneously reported as \$15,000. This error overstates the gravity of the matter by a factor of ten. The Order of Discipline in F-276, specifically and not by reference, erroneously orders Crandall to pay \$15,000 in restitution (R. 42). Obviously, the Bar Commission relied upon

the amount of restitution previously reported in the Order of Discipline in F-276 as being significant in rendering it's Recommendation in F-300, F-307 and F-311.

CONCLUSION

In the Findings of Fact and Conclusions of Law in these matters it is absolutely clear that the Hearing Panel in making it's Recommendation relied on all of the six disciplinary matters brought against Mr. Crandall. It is also clear that all of the six proceedings referred to in the Recommendations were heard after Crandall was forced out of business by the immediate and wrongful suspension for failure to timely tender his Bar dues. This suspension lasted almost eight months before this Court ever entered any Order imposing discipline on Mr. Crandall. Further, it is clear that all of the alleged conduct complained of these matters arose subsequent, directly from, or was aggravated by the wrongful suspension of Mr. Crandall.

These facts remove this case from the typical Bar discipline cases routinely before this Court. Simply stated, the Bar Association's errors, omissions and outright wrongful conduct forced Mr. Crandall out of business and inadvertently laid the foundation for all of the Bar complaints later filed against Mr. Crandall and particularly underlies the failure and in some cases the inability of Crandall to appear and effectively defend himself the Appellant respectfully submits that this matter be

remanded to a committee appointed by this Court to independently review all matters heard by the Utah State Bar Association after Appellant was suspended for failing to timely tender his Bar dues.

RESPECTFULLY SUBMITTED this 26th day of June, 1989.

NORTON, LAWRENCE & HAWKINS

A handwritten signature in cursive script, reading "Robert G. Norton", written over a horizontal line.

Robert G. Norton,
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of July, 1989, I caused to be mailed, postage prepaid, by first-class mail, four true and correct copies of the foregoing BRIEF OF APPELLANT, Richard K. Crandall, to the following:

Christine A. Burdick
Toni Marie Sutliff
OFFICE OF BAR COUNSEL,
UTAH STATE BAR ASSOCIATION
645 South 200 East
Salt Lake City, Utah 84111-3834

Robert G. North

APPENDIX I.

78-51-14. Rules and regulations — Supreme Court to approve.

All rules and regulations made by the board shall be submitted to and approved by the Supreme Court.

History: L. 1931, ch. 48, § 16; R.S. 1933 & C. 1943, 6-0-13.

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Attorneys at Law § 29.

C.J.S. — 7 C.J.S. Attorney and Client §§ 43 to 45.

Key Numbers. — Attorney and Client ⇌ 2.

78-51-15. Hearings and witnesses.

In the investigation of charges of professional misconduct, the board, and any committee appointed by it for the purpose, shall have the power to summon and examine witnesses under oath, and compel their attendance and the production of books, papers, documents and other writings necessary or material to the inquiry. Such summons or subpoena shall be issued under the hand of the secretary or any member of the board, or any member of a committee appointed by the board to conduct such investigation or hearing, and shall have the force and effect of a subpoena issued by a court of competent jurisdiction.

History: L. 1931, ch. 48, § 17; R.S. 1933 & C. 1943, 6-0-14.

NOTES TO DECISIONS

Procedure and evidence.

Record in a prior civil proceeding is admissi-

ble where relevant in a disbarment hearing. In re Strong, 616 P.2d 583 (Utah 1980).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Attorneys at Law §§ 87 to 96.

C.J.S. — 7A C.J.S. Attorney and Client §§ 105 to 108, 111.

A.L.R. — Testimony before or communica-

tions to private professional society's judicial commission, ethics committee, or the like, as privileged, 9 A.L.R.4th 807.

Key Numbers. — Attorney and Client ⇌ 54.

78-51-16. Rights of accused.

Any member of the Utah State Bar complained of shall have notice of the charges against him and opportunity to defend by the introduction of evidence and the examination of witnesses called against him, the right to be represented by counsel and, upon his request, a public hearing. He shall also have the right to have witnesses subpoenaed to appear and testify or produce books, papers, documents or other writings necessary or material to his defense in the manner provided in the next preceding section [§ 78-51-15]. He shall have the right to a review of any order or recommendation by the Supreme Court;

provided, he applies for such review within thirty days after the filing of such order or recommendation with the Supreme Court.

History: L. 1931, ch. 48, § 18; R.S. 1933 & C. 1943, 6-0-15.

NOTES TO DECISIONS

Right to counsel.

Where a hearing proceeded although counsel who was to defend the accused was detained in court, but testimony rested almost entirely upon admissions of the accused, the contention

that the accused was forced to trial without the benefit of counsel was held without merit, since the action was not prejudicial. In re Steffensen, 85 Utah 380, 39 P.2d 722 (1935).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Attorneys at Law § 87 et seq.

C.J.S. — 7A C.J.S. Attorney and Client § 88 et seq.

A.L.R. — Extent and determination of attorney's right or privilege against self-incrimina-

tion in disbarment or other disciplinary proceedings—post-Spevack cases, 30 A.L.R.4th 243.

Key Numbers. — Attorney and Client ⇐ 47 et seq.

78-51-17. Record of proceedings.

A complete record of the proceedings and evidence taken by the board, committee or commissioner shall be made and preserved by the board.

History: L. 1931, ch. 48, § 19; R.S. 1933 & C. 1943, 6-0-16.

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Attorneys at Law § 87.

C.J.S. — 7A C.J.S. Attorney and Client §§ 105 to 108, 111.

A.L.R. — Confidentiality of proceedings or

reports of judicial inquiry board or commission, 5 A.L.R.4th 730.

Key Numbers. — Attorney and Client ⇐ 54.

78-51-18. Findings and report.

The board shall make findings and reports to the Supreme Court of the results of its hearings and investigations, and conclusions, with recommendations in the premises, and in all cases in which the evidence in the opinion of a majority of the board justifies such a course, shall recommend such disciplinary action by public or private reprimand, suspension from the practice of the law, or exclusion and disbarment therefrom, as the case shall in its judgment warrant.

History: L. 1931, ch. 48, § 10; R.S. 1933 & C. 1943, 6-0-17.

NOTES TO DECISIONS

Board required to make own findings and hold hearing.

Board's adoption, without holding an evidentiary hearing, of findings made by a federal court in a case that led to the accusations of an

attorney's misconduct did not comply with this section's requirements that the board is to make its own findings based upon an evidentiary hearing. In re Strong, 616 P.2d 583 (Utah 1980).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Attorneys at Law § 87.

C.J.S. — 7A C.J.S. Attorney and Client §§ 34, 105 to 108, 111.

Key Numbers. — Attorney and Client 54.

78-51-19. Review by Supreme Court — Inherent powers of courts not affected.

Upon the making of any order by the board recommending the discipline, suspension or disbarment of any member of the Utah State Bar from the practice of law, the board shall cause a certified copy thereof to be filed with the clerk of the Supreme Court. The Supreme Court may review the action of the board, and may on its own motion and without the certification of any record inquire into the merits of the case, and take any action agreeable to its judgment. Nothing in this title contained shall be construed as limiting or altering the powers of the courts to disbar or discipline members of the bar.

History: L. 1931, ch. 48, § 10; R.S. 1933 & C. 1943, 6-0-18.

NOTES TO DECISIONS

ANALYSIS

Judicial responsibility.
Review of charges.

Judicial responsibility.

The final responsibility of a disciplinary proceeding is upon the Supreme Court and this involves more than mere rubber stamp endorsement of the action of the commission; nevertheless, the Supreme Court deems it discreet and proper to indulge considerable latitude to the actions and judgment of the commission in such matters and would not disregard its findings and recommendations in absence of some persuasive reasons for doing so. In re Macfarlane, 10 Utah 2d 217, 350 P.2d 631 (1960).

Supreme Court will follow a bar commission recommendation unless arbitrary, capricious or unreasonable. In re Wade, 27 Utah 2d 410,

497 P.2d 22 (1972); In re Johnston, 524 P.2d 593 (Utah 1974).

Review of charges.

Attorney has the right of review of the charges found against him and on such review the charges should be sustained by convincing proof and a fair preponderance of the evidence. In re McCullough, 97 Utah 533, 95 P.2d 13 (1939).

On review of recommendation of suspension of an attorney by the board of commissioners of the Utah State Bar, the court is not limited to the charges and record found by the board. In re McCullough, 97 Utah 533, 95 P.2d 13 (1939).

and may be employed in a clerical position by the Utah State Bar, but shall not be entitled to vote at any election or upon any question. The annual membership fee for an inactive member shall be \$5.00, payable on or before April 1, of each year; provided, the board of commissioners shall have power to increase such fee to a sum not exceeding \$10.00. An inactive member may, if in good standing, upon his written request to the board of commissioners be enrolled as an active member. Upon the filing of such request and the payment of the full annual license fee for the current calendar year, less any membership fee paid by him as an inactive member for such year, the applicant shall be immediately transferred from the inactive roll to the active roll.

History: L. 1931, ch. 48, § 5; R.S. 1933 & C. 1943, 6-0-23; L. 1963, ch. 195, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d Attorneys at Law § 7.	Key Numbers. — Attorney and Client 31, 34.
C.J.S. — 7 C.J.S. Attorney and Client § 8.	

78-51-25. Practicing without a license prohibited — Action or proceedings to enforce — Exception.

No person who is not duly admitted and licensed to practice law within this state nor any person whose right or license to so practice has terminated either by disbarment, suspension, failure to pay his license fee or otherwise, shall practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer within the state. Such practice, or assumption to act or holding out, by any such unlicensed or disbarred or suspended person shall not constitute a crime, but this prohibition against the practice of law by any such person shall be enforced by such civil action or proceedings, including quo warranto, contempt or injunctive proceedings, as may be necessary and appropriate, which action or which proceedings shall be instituted by the board of commissioners of the Utah State Bar; providing, that in any action or proceeding to enforce the prohibition against the practice of law, the accused shall be entitled to a trial by jury.

Nothing in this section shall prohibit a person who is unlicensed as an attorney from personally representing his own interests in a cause to which he is a party in his own right and not as assignee.

History: R.S. 1898 & C.L. 1907, § 112; C.L. 1917, § 323; L. 1931, ch. 48, § 21; R.S. 1933 & C. 1943, 6-0-24; L. 1963, ch. 196, § 1.

Cross-References. — Contempt generally, § 78-32-1 et seq.

Extraordinary writs, Rules of Civil Procedure, Rule 65B.

Injunctions, Rules of Civil Procedure, Rule 65A.

COLLATERAL REFERENCES

C.J.S. — 7 C.J.S. Attorney and Client § 7. **Key Numbers.** — Attorney and Client ⇌
A.L.R. — Validity of state or municipal tax 28, 31.
or license fee upon occupation of practicing
law, 50 A.L.R.4th 467.

78-51-22. Issuance of license — Form.

The secretary of the Utah State Bar shall issue to each person paying said license fee, if such person shall have theretofore been admitted to practice law in this state by the Supreme Court and not disbarred or then under suspension, a license in such form as the board may prescribe, for the year for which fees were paid, and shall deliver such license to the person entitled thereto.

History: L. 1931, ch. 48, § 13; R.S. 1933 &
C. 1943, 6-0-21; L. 1957, ch. 175, § 1.

COLLATERAL REFERENCES

C.J.S. — 7 C.J.S. Attorney and Client § 7.
Key Numbers. — Attorney and Client ⇌ 9,
28.

78-51-23. Powers of board respecting funds.

For the purpose of carrying out the objects of this title, and in the exercise of the powers herein granted, the board shall have power to make orders concerning the disbursement of said fund.

History: L. 1931, ch. 48, § 14; R.S. 1933 &
C. 1943, 6-0-22.

COLLATERAL REFERENCES

C.J.S. — 7 C.J.S. Attorney and Client § 7.
Key Numbers. — Attorney and Client ⇌
28, 31.

78-51-24. Active and inactive members of bar.

Any member of the Utah State Bar, who has retired from the practice of law, or who is not engaged in the practice of law, upon written request, may be enrolled as an inactive member. No member of the Utah State Bar practicing law, or occupying a position in the employ of or rendering any legal service for an active member or occupying a position where he is called upon to give legal advice or counsel, or examine the law or pass upon the legal effect of an act, document or law, shall be enrolled as an inactive member. There shall be no rebate of any license fee upon transfer from active to inactive membership after August 1, of the year in which the request is filed. An inactive member may attend the annual and special meetings, and participate in any debates or discussions at such meetings, may be appointed by the board of commissioners upon special committees, other than committees for examination of qualification for admission to practice and disciplinary committees,

Rules for Integration and Management of the Utah State Bar

(A) Organization of the Utah State Bar

1. In order to advance the administration of justice according to law, to aid the courts in carrying on the administration of justice, to provide for and regulate the admission of persons seeking to engage in the practice of law, to provide for the regulation and discipline of persons engaged in the practice of law, to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service, and high standards of conduct, to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence, and law reform, to carry on a continuing program of legal research in technical fields of substantive law, practice and procedure, and to make reports and recommendations thereon, to encourage practices that will advance and improve the honor and dignity of the legal profession; and to the end that the responsibility of the legal profession and the individual members thereof may be more effectively and efficiently discharged in the public interest, and acting with the powers vested in it by the Constitution of this State and its inherent power over members of the legal profession as officers of the Court, the Supreme Court of Utah does hereby perpetuate, create and continue under the direction and control of the Court an organization known as the Utah State Bar. All persons now or hereafter licensed in this State to engage in the practice of law shall be members of the Utah State Bar, in accordance with the rules of this Court. The Utah State Bar may sue and be sued, may enter into contracts and acquire, hold, encumber, dispose of and deal in and with real personal property, and promote and further the aims, as set forth in these Rules. All property, real and personal and all monies of the Utah State Bar presently belonging to the Utah State Bar, shall be perpetuated and continued in such ownership.

2. The qualifications of attorneys for admission to practice before the courts of this State, the duties, obligations and certain of the grounds for discipline of members, and the methods of establishing such grounds, subject to the right of this Court to discipline a member when it is satisfied that such member is not mentally or morally qualified to practice law even though none of the specific grounds for discipline set forth in these Rules exist, shall be prescribed in these Rules pertaining to admission and discipline of attorneys.

3. No person shall practice law in this State or hold himself out as one who may practice law in this State unless he is an active member of the Utah State Bar, and no suspended or disbarred member shall practice law in this State or hold himself out as one who may practice law in this State while suspended or disbarred.

(B) Definitions. Unless the context otherwise requires, the following definitions shall apply to the interpretation of these Rules relating to admission and discipline of attorneys:

1. "Board" means Board of Commissioners of the Utah State Bar.

2. "Discipline" means disbarment, suspension, probation, public reprimand or private reprimand.

3. "Member" means member of the Utah State Bar, the classifications of which are to be set forth hereinafter.

4. "Bar" means the Utah State Bar perpetuated, created and continued by rules of this Court.

5. "Non-Member" means a person licensed to practice law in a state, territory or possession of the United States, who is not a member of the Utah State Bar.

6. "Supreme Court" means the Utah Supreme Court.

(C) Rules of Organization and Management of the Bar.

1. Qualification for Membership. All persons who have been heretofore, and all persons who shall hereafter be, duly admitted to practice as an attorney at law in the Supreme Court of this State, and who are not the subject of an order of the Supreme Court which terminates, suspends or restricts the right to practice law in this State, are qualified to be members of the Bar, subject to the provisions of these Rules.

2. Board of Commissioners, Number, Term and Vacancies. There shall be a Board of Commissioners of the Bar consisting of eleven members. Except as otherwise provided, the term of office of each commissioner shall be three years and until his successor is elected and qualified. In the event of vacancy in the Board, the remaining commissioners shall appoint a successor from among the practicing members of the Bar of the division from which such commissioner was elected, who shall serve until the following annual election.

3. Territorial Divisions. For the purposes of these Rules; the first judicial district shall be known as the first division; the second judicial district shall be known as the second division; the third judicial district shall be known as the third division; and the fourth judicial district shall be known as the fourth division; and the fifth, sixth and seventh judicial districts shall be known as the fifth division.

4. Number of Commissioners from each Division. There shall be one member of the Board from each of the divisions, except the third division from which there shall be seven commissioners. No more than one commissioner from any division, except from the third division, and no more than seven commissioners from the third division, shall serve on such Board at the same time.

5. Nomination and eligibility of Commissioners. Attorneys in one division shall alone have the right to nominate persons for the office of commissioner from that division. To be eligible for the office of commissioner in a division, the nominee's mailing address must be in that Division as shown by the records of the Bar. Nomination to the office of commissioner shall be by written petition of ten or more of the members of the Bar in good standing. Any number of candidates may be nominated on a single petition. Nominating petitions shall be mailed to the secretary of the Bar within a period to be fixed by the rules made by the Board.

6. Election of Commissioners. The Board shall be elected by the vote of the resident active members of the Bar as follows: In the year 1983 and every third year thereafter, one member from the second division and three members from the third division, except that in the year 1983 only, there shall be four members elected from the third division; in the year 1984 and every third year thereafter, one member from the first division and two members from the third division; in the year 1985 and every third year thereafter, two members from the third division and one each from the fourth and fifth divisions. The candidate from any division, and the three or two candidates from the third division, receiving the greatest number of votes of the division shall be the commissioner from such division. For the year 1983, the candidate from the third division receiving the fourth greatest number of votes shall be the commissioner for two year term. An attorney is limited to voting for candidates for commissioner from the division in which his mailing address is located as shown by the records of the Bar. The ballots shall be deposited in person or by mail with the secretary of the Board, or such other officer as it may designate. There shall be an annual election by the resident active members of the Bar for the purpose of filling vacancies. The Board shall fix the time for holding the annual election and prescribe rules and regulations in regard thereto, not in conflict with the provisions of these Rules. The Board shall, in accordance with its rules, give at least ninety days notice by mail of the time for holding the election each year.

Those persons holding office as commissioners at the time of the adoption of these Rules or who were elected under the existing statute will continue in office for the period of their term elected to serve.

7. Organization of Board. After each election, the Board shall organize by the election of a president-elect and a president of the Bar. The president-elect shall be chosen from among the members of the Board whose terms of office will not expire for two years or more. The president-elect for the previous year shall be elected president. The president and the president-elect shall hold office until their successors are elected following the next succeeding annual election. A secretary and such other assistants as the Board may require may be selected within or without the Board to hold office during the pleasure of the Board and to be paid such compensation as the Board shall determine.

8. Meeting, Annual and Special - Notice. There shall be an annual meeting of the Bar, presided over by the president of the Bar, open to all members in good standing, and held at such time and place as the Board may designate, for the discussion of the affairs of the Bar and the administration of justice. Special meetings of the Bar may be held at such times and places as the Board may designate. Notice of all meetings shall be given by mail to all members of the Bar not less than fifteen days prior to the date of such meeting.

9. By-laws. The Board shall have power to adopt by-laws, not in conflict with any of the terms of these Rules; concerning the selection and tenure of its officers and committees, their powers and duties, and generally for the control and regulation of the business of the Board and of the Bar.

10. Admission to Practice Law, Qualifications, Enrollment, Oath, Fees.

(a) The Board shall have power to determine the qualifications and requirements for admission to the practice of law, and to conduct examinations of applicants; and it shall have power to time certify to the Supreme Court those applicants found to be qualified. Qualifications and requirements for admission to the practice of law shall be as set forth in the Revised Rules of the Utah State Bar for Admission to the Utah State Bar. The approval by the Supreme Court of any person certified for membership in accordance with such Rules shall entitle him to be enrolled in the Bar upon his taking an oath to support the Constitution of the United States and of this State and to discharge faithfully the duties of an attorney to the best of his knowledge and ability, and the payment of the fee fixed by the Board of the Bar with the approval of the Supreme Court, and thereafter, to practice law upon payment of the license fees herein provided subject to the provisions of these Rules.

(b) Upon receiving certification by the Board and approval from the Supreme Court, the applicant shall pay fifty dollars to the Clerk of the Supreme Court for a Certificate of Admission, thirty-five dollars of which shall be retained by the State Treasurer as a special fund for the benefit of the State Library, to be expended by the Board of Control.

11. Roll of Attorneys. The Clerk of the Supreme Court must keep a roll of the attorneys admitted to practice, which must be signed by each person admitted before he is enrolled and receives his Certificate of Admission to the Bar.

12. Conduct of Attorneys, Conduct of Judicial Officers, Complaints, Investigations, Discipline, Taking Testimony. The Board shall formulate rules governing the conduct of persons admitted to practice, and shall investigate and consider and pass upon unethical, questionable or improper conduct of persons admitted to the practice of law, including members of the Bar holding judicial office. The Board shall also formulate rules governing procedures in cases involving alleged misconduct of members of the Bar, including those holding judicial office, and may create committees for the purpose of investigating complaints, which committees may be empowered to administer discipline, including the recommendation of suspension or disbarment from the practice of law, in the same manner as the Board itself, but no recommendation for the suspension or disbarment of a member shall be final until approved by the Board. The Board or any such committee may designate any officer, authorized by law to take depositions, to take testimony under oath in any such investigation.

13. Board of Commissioners, Powers, Conduct of Members of Bar Holding Judicial Office. The Board shall also have the power to make or cause to be made an investigation and upon all unethical, questionable, or improper conduct of members of the Bar holding judicial office and to make recommendations to the Supreme Court or other appropriate body respect thereto.

14. Rules and Regulations, Supreme Court to Approve. All rules and regulations formulated by the Board shall be submitted to and approved by the Supreme Court.

15. Studies and Recommendations by the Bar. The Governor, the Supreme Court and the Legislature may request of the Board an investigation and study of any recommended upon any matter relating to the courts of this state, practice and procedure therein, practice of the law, and the administration of justice, and thereupon it shall be the duty of said Board to cause such investigation and study to be made, to report thereon to an annual meeting of the Bar, and, after the action of said meeting thereon, to report the same to the officer making the request. The Board may, without such request, cause an investigation and study upon the same subject matters, and, after a report thereon to the annual meeting of the Bar, report the same and the action of said meeting thereon to the Governor, the Supreme Court, or the Legislature.

16. Annual License, Fees, Disbursements of Funds. Every person practicing, or holding himself out as practicing law within this state, or holding himself out to the public as a qualified to practice or carry on the calling of an attorney within this state shall prior to so doing and prior to the first day of March of each year, pay to the Bar a license fee in an amount fixed by the Board of the Bar with the approval of the Supreme Court to effectuate the purposes of these Rules. These funds shall be administered by the Bar.

17. Issuance of License, Form. The Secretary of the Bar shall issue to each person paying said license fee, if such person shall have theretofore been admitted to practice law in this state by the Supreme Court and not disbarred or then under suspension, a license in such form as the Board may prescribe, for the year for which fees were paid, and shall deliver the license to the person entitled thereto.

18. Powers of the Board Respecting Funds. For the purpose of carrying out the objects of these Rules, and in the exercise of the powers herein granted, the Board shall have the power to make orders concerning the disbursement of said funds.

19. Active and Inactive Members of the Bar. Any member of the Bar, who has retired from the practice of law, or who is not engaged in the practice of law, upon written request may be placed on the inactive list. There shall be no rebate of any license fee upon transfer from active to inactive membership after August 1, of the year in which the request is filed.

(3) The disciplinary proceeding is based upon allegations that have become generally known to the public.

(b) A complainant shall have the right to appear before the disciplinary panel personally or through a designated representative to make a statement in support of his or her complaint or in opposition to the matters presented by the attorney against whom complaint has been made. This shall not include direct confrontation of the parties unless specifically authorized by the panel.

Rule VII. Discipline and Sanctions.

(a) **Disbarment.** Disbarment shall result in the revocation of an attorney's license to practice law and in the removal of the disbarred attorney from the roll of attorneys of the Supreme Court authorized to engage in the practice of law in the state of Utah. The Supreme Court has exclusive power to order disbarment.

(b) **Suspension.** Suspension of an attorney shall remove said individual as a member of the Bar of the Supreme Court in good standing and shall render him or her incapable and unqualified to practice law in the state of Utah during the period of suspension. The period of suspension may be of any time frame less than 2 years' duration. The Supreme Court has exclusive powers to order suspension. Any term of suspension may be stayed by the Supreme Court conditioned on the suspended attorney's compliance with certain terms and conditions of the stayed suspension. An active member of the Utah State Bar who is in good standing may be appointed by the Board to supervise the suspended attorney and to assure that the suspended attorney complies with the terms and conditions of the stayed suspension.

(1) **Temporary suspension.** Upon petition of the Board, or of the Committee (with the consent of the Board) filed with the Supreme Court, or on its own motion, the Supreme Court may issue an interim order suspending an attorney from the practice of law or imposing temporary conditions of probation pending a final determination in any disciplinary proceeding. The Supreme Court shall have exclusive power to place an attorney on interim suspension. If such a petition of the Board is filed prior to, concurrently with or subsequent to the filing of its findings, conclusions and recommendation with the Supreme Court in a disciplinary case, such petition shall be supported by affidavits and exhibits demonstrating that the attorney has been convicted of a crime involving moral turpitude or is causing great harm to the public and/or a client or clients pending final disposition of the disciplinary proceeding.

(2) In the event of a petition for interim suspension, the Board shall have the burden of proof that the relief sought should be granted in whole or in part.

(3) Any order of temporary suspension shall preclude the attorney from accepting new cases, but shall not preclude him from continuing to represent existing clients during the first 30 days after the effective date of the temporary order, provided that any fees tendered to such attorney for services performed during the 30-day period shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the Supreme Court.

(4) A temporary suspension order which restricts the attorney from maintaining an account against which the attorney may make withdrawals shall serve as an injunction to prevent the bank from making

further payments thereon except in accordance with restrictions imposed by the Supreme Court.

(5) The Supreme Court shall have exclusive power to terminate an interim suspension.

(c) **Probation.** Probation may be imposed only in those cases in which there is little likelihood that the attorney on probation will harm the public during the period of probation and the conditions of probation can be adequately supervised. The Board may appoint an active member of the Utah State Bar who is in good standing to supervise the attorney and to assure that the attorney fulfills the conditions of the probation.

Probation shall be imposed for a specified period not in excess of 2 years and may be renewed for an additional 2-year period. The conditions of the probation shall be stipulated in writing and may only be imposed by the Supreme Court.

Probation may be terminated upon the filing of an affidavit by the respondent that he has complied with the conditions of probation and an affidavit by the probation supervisor that probation is no longer necessary.

If the probation supervisor fails to file an affidavit, Bar Counsel should investigate to determine whether the respondent should be fully reinstated. Bar Counsel may recommend that the respondent be fully reinstated, that the period of probation be extended for a period not to exceed 2 years or that other discipline be imposed.

(d) **Public reprimand.** For unprofessional conduct, an attorney may be publicly reprimanded. The Supreme Court has exclusive power to impose the reprimand. Such shall be accomplished in writing with the reasons for the same set forth with particularity. A public reprimand, while a form of serious professional discipline, shall not impair the privilege of the attorney to continue the practice of law in the state of Utah. A permanent record shall be maintained of the reprimand so that it is available in determining the extent of discipline to be imposed in the event other complaints of unprofessional conduct are subsequently prosecuted against the attorney.

(e) **Private reprimand.** For unprofessional conduct of a lesser character, a private reprimand may be imposed upon an attorney. The Board has power to impose a private reprimand. Said reprimand shall be in writing and shall set forth the facts constituting the unprofessional conduct. If the Committee recommends a private reprimand to the Board, such recommendation shall be in writing including a statement of the nature of the case, defenses and the factual basis for the recommendation. A confidential record of the private reprimand shall be permanently maintained so that it may be available in determining the extent of discipline to be imposed in the event that other complaints of unprofessional conduct are subsequently prosecuted against the attorney. Notice of the reprimand shall be given to the complainant.

(f) **Private admonition.** For unprofessional conduct of a minor character or to provide a guide for future conduct of the attorney, a private admonition may be issued. Such admonition shall be issued only by the Committee after a hearing in which the attorney has had an opportunity to present his position or defense. A private admonition may be considered by Bar Counsel or the Committee in determining whether there is indicated an established course of unprofessional conduct, but such reference shall not relate to admonitions issued 5 years or more previously.

(g) **Costs.** For unprofessional conduct, the Supreme Court and/or the Board may require payment of the disciplined attorney of costs of the proceedings,

having the opportunity to be present. The attorney shall have the burden of proof of showing that the Committee recommendation is unreasonable, unsupported by substantial evidence, arbitrary, capricious or otherwise clearly erroneous.

(b) In the event that the Board issues a private reprimand against the attorney in question, confidential notice shall be given to the complainant, stating that his complaint has been substantiated and that the attorney in question has been privately reprimanded. The attorney will also be notified that the private reprimand, as issued, will be maintained in the files of the Bar as a permanent record for future reference.

(c) The Board may remand the Committee's recommendation of a private reprimand to the Committee for reconsideration.

Rule XI. Proceedings on Formal Committee Complaint.

(a) **Formal Committee Complaint.** In the event the Committee determines that a Formal Committee Complaint is merited, it shall prepare and file with the Board said Formal Committee Complaint setting forth in plain and concise language the facts upon which the charge of unprofessional conduct is based and the specific applicable provisions of the Revised Rules of Professional Conduct. The Formal Committee Complaint shall be signed by the Committee Chairman or, in his absence, by any other Committee member. Bar Counsel shall advise the complainant that a Formal Committee Complaint, involving formal charges, has been filed against the attorney in question.

(b) **Service.** Bar Counsel shall cause to be served upon the attorney in question a copy of the Formal Committee Complaint and a summons, the latter of which shall require the attorney to appear and answer said Formal Committee Complaint within 20 days after service. Service shall be made personally upon the attorney in question or by registered or certified mail to the last known address as shown by the official roster of attorneys of the Bar. Three additional days shall be allowed to answer the Formal Committee Complaint in the event that service is accomplished by mail. Proof of service of the summons and the Formal Committee Complaint shall be made by affidavit of the person making such service or by a certificate of mailing by registered or certified mail or by the affidavit of Bar Counsel that such mailing has been accomplished.

(c) **Answer.** The attorney in question shall file his answer to the Formal Committee Complaint in writing with the office of the Executive Director of the Bar within the time allowed or such further time as the Board, upon good cause shown, may grant. The answer shall admit or deny the allegations of the Formal Committee Complaint and may raise such defenses and motions as are permitted under the Utah Rules of Civil Procedure. A copy of the answer shall be served upon Bar Counsel who may thereafter file a reply as to new matters raised by the answer. The Board shall proceed to hear the case on the issues framed by the pleading and motions, if any, and notice shall be given to Bar Counsel and the attorney of the time and place for such hearing.

(d) **Default.** In the event the attorney fails to file and serve his answer to the Formal Committee Complaint within the time established, he shall be deemed to have admitted the allegations and charges in the said Complaint and the Board shall enter the attorney's default. The Board shall thereupon fix a time and place for hearing, notice of which shall be given to Bar Counsel and the attorney, and shall thereupon proceed to hear and receive evidence

and argument with respect to the discipline, if any, to be imposed or recommended.

(e) **Discovery.** For a period not to exceed 75 days from service of the Formal Committee Complaint, Bar Counsel and the attorney may engage in discovery proceedings pursuant to Rules 26 through 37, Utah Rules of Civil Procedure. For good cause shown, the Board may extend the time for discovery, not to exceed an additional 120 days, unless there are extraordinary circumstances requiring a further delay.

(f) **Orders compelling discovery and sanctions.** Either Bar Counsel or the attorney in question may move the Board for an order compelling discovery, giving reasonable notice of the motion to the opposing party. Thereafter, if Bar Counsel or the attorney in question fails to comply with the Board's order, the Board may make such orders in regard to the failure as are just and, among others, the following:

(1) An order that the matters regarding which the order was made or any other designated facts be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing designated matters into evidence;

(3) An order striking pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the proceedings or any part thereof or entering findings, conclusions and recommendations against the disobedient party by default.

(g) **Pretrial procedure.** The Board or a designated hearing committee may, in its discretion, sua sponte or upon motion of Bar Counsel or the attorney in question, direct that a pretrial conference be held to consider matters and issues pursuant to Rule 16, Utah Rules of Civil Procedure. Upon such conference, the Board shall issue an order reciting the action taken at the conference, amendments allowed to the pleadings and stipulations made which limit the issues for trial. Such order shall control the subsequent course of the case, unless modified at the hearing to prevent manifest injustice.

(h) **Filing.** The originals of all pleadings, motions, orders, etc., shall be filed with the Executive Director of the Bar, who shall function as clerk in all disciplinary Formal Committee Complaint proceedings. Copies of all such documents shall be mailed or delivered to the attorney or his counsel and all members of the designated hearing committee.

Rule XII. Disciplinary Hearing before Board.

(a) **Hearing Committee Panel.** All Formal Committee Complaints will be submitted to and heard before a committee of two members of the Bar selected by the Board and one public member appointed by the Supreme Court. The Board shall appoint twelve members of the Bar to act on the Hearing Committee Panel, consisting of two attorneys from the first and second divisions, two attorneys from the fourth and fifth divisions, six attorneys from the third division and two at-large attorneys from any divisions. In addition, six public members of the Hearing Committee Panel shall be appointed by the Supreme Court. All regular terms shall be three years, and no member shall serve more than two consecutive three-year terms. Provided, however, for the initial appointments to the Hearing Committee Panel, one member of the Bar from the first and second divisions shall be appointed for one year, and one shall be appointed for three years; one member of the Bar from the fourth and fifth

divisions shall be appointed for two years and one for three years; two members of the Bar from the third division shall be appointed for one year, two shall be appointed for two years and two shall be appointed for three years and the public members shall be appointed one for one year, two for two years and two for three years. The President of the Bar shall assign a hearing committee to a particular case and shall name a hearing committee chairman from the Committee in each case.

(b) **Evidence.** The rules of evidence and procedure applicable to the conduct of nonjury civil trials in the district courts of the state of Utah shall govern the hearing on a Formal Committee Complaint. A verbatim recording shall be maintained by electronic and/or stenographic means.

(c) **Burden and standard of proof.** The burden of proof shall be on Bar Counsel to sustain the Formal Committee Complaint, or various counts thereof, by clear and convincing evidence.

(d) **Personal attendance by the attorney.** Unless excused from attendance by the chairman of the Hearing Committee for good cause shown, the attorney whose conduct is the subject of the hearing shall attend the hearing in person and shall answer any questions put to him by Bar Counsel and the Hearing Committee.

(e) **Findings, conclusions and recommendation.** After the hearing is completed, the Hearing Committee shall make written findings of fact, conclusions of law and its recommendation as to the discipline of the attorney and shall submit the same to the Board. The Board shall review and consider the findings, conclusions and recommendation of the Hearing Committee, and it may affirm, modify or disaffirm the Hearing Committee determinations in whole or in part. The findings, conclusions and recommendation shall then be entered by the Board either dismissing the complaint or recommending disbarment, suspension, probation, public reprimand, restitution and/or costs. A copy of the findings, conclusions and recommendation shall be served upon Bar Counsel and the attorney in question or his counsel.

(f) **Petitions for amendment, modification or reconsideration.** With 10 days of service of the Board's findings, conclusions and recommendation, Bar Counsel or the attorney in question may petition the Board to amend, modify or reconsider the findings, conclusions or recommendation. The petition shall be filed with the Executive Director of the Bar. The petition shall specify any proposed amendment or modification and any reasons advanced for reconsideration. The petition may be supported by legal argument and may be accompanied by a request for oral argument. The Board shall permit oral argument on the petition if requested.

(g) **Transmittal to Supreme Court.** Upon all proceedings before the Board having been concluded, in the event that discipline is recommended, a certified copy of the Board recommendation setting forth the recommended discipline, accompanied by the findings of fact and conclusions of law, shall be forthwith forwarded to the Clerk of the Supreme Court, and copies thereof shall be served upon the attorney in question and Bar Counsel.

(h) **Public access to proceedings.** Upon the filing of a Formal Committee Complaint, the pleadings in the matter shall be open to the view of all interested persons. Evidentiary hearings conducted by the Hearing Committee shall be open to the public. The findings of fact, conclusions of law and recommendation of the Hearing Committee and Board shall be open to all interested persons.

(i) **Ex parte communications prohibited.** Neither Bar Counsel nor members of the disciplinary staff shall engage in ex parte communications with

members of the Board or members of the Hearing Committee concerning any disciplinary case that is being or may be considered by the Board of the Hearing Committee.

Rule XIII. Discipline by Consent.

At any time during a disciplinary proceeding, the Board may at its discretion accept from the attorney in question an admission to the accusations contained in the complaint or the Formal Committee Complaint in exchange for a stated form of discipline. Such written admission shall specify that the attorney in question agrees that the Formal Committee Complaint cannot be successfully resisted, that the attorney has violated provisions of the Revised Rules of Professional Conduct as charged, that the admission is made voluntarily and without coercion or duress and that the attorney in question is aware of the implications of the admission and the misconduct, the nature of which shall be specifically set forth.

The admission may be accepted upon such terms and conditions as the Board shall prescribe subject to review and approval of the Supreme Court.

Rule XIV. Review by and Appeals to the Supreme Court.

(a) **Review on appeal.** Within 30 days after service of findings, conclusions and a recommendation of the Board upon the attorney in question and Bar Counsel, the attorney or Bar Counsel (the latter acting at the express direction of the Committee) may seek review by the Supreme Court by filing a written notice of appeal with the Clerk of the Supreme Court. Said notice shall set forth the basis of the appeal, specifying grounds for the appeal. A copy of the notice of appeal shall be served on the other party and upon the Executive Director of the Bar on behalf of the Board.

(1) The Executive Director shall be responsible for preparing the record of the proceedings and forwarding the same to the Supreme Court, which shall be accomplished within 60 days following the notice of appeal. The record shall include the original complaint, Formal Committee Complaint, pleadings, notices, motions and other papers filed in the case. The appellant shall be responsible for paying the costs of a transcript of the Board proceedings to be filed with the Supreme Court at the time that the record is filed. On the filing of the record and the transcript, the Supreme Court shall set a briefing schedule for the appellant and the respondent. Any briefs filed with the Supreme Court shall conform to and be in accordance with Rule 75 Utah Rules of Civil Procedure. Upon the filing of briefs, the Supreme Court shall set a date for oral argument.

(2) Upon submission of the case, the Supreme Court shall issue a written opinion as in other appellate matters before it, in which the findings, conclusions and recommendation of the Board may be approved, modified or reversed.

(b) **Proceedings if no appeal.** If there is no appeal from the findings, conclusions and recommendation of the Board, the Supreme Court shall enter an order approving and adopting the same as its own, unless from a review of the findings and conclusions, it is determined that the recommendation is arbitrary, capricious, or clearly erroneous.

(d) Compliance with the provisions of Paragraph (a) or (c) of this rule shall be an absolute precondition for reinstatement or readmission to the Bar. The failure to comply with Paragraph (a) or (c) shall constitute a contempt of the Supreme Court and may be punished by confinement, fine, payment of costs or further disciplinary action.

Rule XIX. Suspension for Disability.

(a) **Committee determination.** When in the course of disciplinary proceeding or otherwise the Committee determines that an attorney, because of mental infirmity, mental illness or addiction to intoxicants or drugs, poses a danger to the interest of his clients and the general public and should not be permitted to practice law further, the Committee may:

(1) Refer the matter to the Board upon recommendation that the Board may accept the voluntary surrender of the attorney's license to practice law;

(2) File a Formal Committee Complaint for the medical suspension of the attorney's license to practice law, which Formal Committee Complaint shall be treated and heard as other such complaints pursuant to these rules with the exception that there shall be substituted in the Formal Committee Complaint in place of allegations of unprofessional conduct a plain and concise statement of the mental infirmity, mental illness, or addiction to intoxicants or drugs set forth.

(b) **Board recommendation.** Upon determination by the Board that an attorney is suffering from mental infirmity, mental illness or addiction to intoxicants or drugs so as to render him substantially disabled and unable to continue the practice of law, the Board shall enter findings, conclusions and an order pursuant to Rule XII of these rules and shall recommend suspension of the attorney for medical reasons until such attorney is restored to health and/or rehabilitated and a good and sufficient showing thereof is made before the Board.

(c) **Review by Supreme Court.** The Supreme Court shall review the recommendation of suspension for medical disability as in other disciplinary proceedings pursuant to these rules.

Rule XX. License Fee — Suspension for Nonpayment.

The annual license fee shall be payable on or before March 1 of each year. Any member, active or inactive, who fails to pay the fees upon that date or within 30 days thereafter shall be dropped from the roll of qualified attorneys. In such event, he shall not practice law or appear as an attorney in any court of this state until he is reinstated. The Executive Director of the Bar shall give notice of such removal from the rolls to such noncomplying member by certified mail and by ordinary mail to the Chief Justice of the Supreme Court and to the judges of the district and circuit courts of the state. The noncomplying member may apply in writing for re-enrollment by tendering the delinquent fees and a \$100.00 filing fee, as approved by the Supreme Court. Upon receiving the same, the Utah State Bar Commission shall accept it and order re-enrollment, unless the Board for some justifiable cause deems it not to be in the best interests of the Bar and the public to do so. In that event, the Board shall within 30 days so notify the member. He may then within 30 days after receipt of such notice petition the Board for a hearing before it or a committee appointed by it for that purpose. Such a hearing shall be held without undue

delay, and the member shall be given at least 10 days' notice of the time and place of such hearing. Upon his request, he shall be informed in writing of the reasons for such refusal. He shall be afforded the privileges of appearing personally and/or by counsel at the hearing, of cross-examining any witness against him and of offering evidence in his own behalf. Pursuant to that proceeding, the Board shall make written findings and such order as in its judgment will best serve the interests of the Bar and of the public. Such findings and order shall be served on the member by certified mail within 10 days thereafter. Such proceedings and the order made are subject to review by the Supreme Court upon application made within 30 days after the date of the entry of the order.

Rule XXI. Readmission and Reinstatement.

(a) **Readmission.** An attorney who has been disbarred shall not be entitled to apply for readmission to the Bar until at least 5 years after the effective date of disbarment. In all events, said individual shall not be considered for readmission unless there is shown, by clear and convincing evidence to the Board and the Supreme Court, rehabilitation of that conduct which brought about the disbarment, as well as fitness to practice law, competence and compliance with all applicable disciplinary orders and rules. A disbarred attorney seeking readmission to the Bar shall be required, in addition, to successfully sit for and pass the regular State Bar examination. The Supreme Court has exclusive power to readmit a disbarred attorney.

(b) **Reinstatement.** An attorney who has been suspended from the practice of law for unprofessional conduct shall not be entitled to apply for reinstatement until the time for suspension has passed and there is shown by clear and convincing evidence that all terms and conditions of the suspension have been met, all applicable disciplinary orders and rules have been satisfied and the suspended attorney is fit and competent to re-engage in the practice of law. An attorney who has been suspended for a period of one year or more shall be required to successfully pass a special written examination on legal ethics. The Supreme Court has exclusive power to reinstate a suspended attorney.

(c) **Proceedings.** An application for readmission or reinstatement shall be by written and verified petition, addressed to the Board and filed with the Executive Director of the Bar. The petition shall set forth the name, age and business and residential addresses of the petitioner, his residence and occupation during the period of disbarment or suspension, the cause of disbarment or suspension and a concise statement of facts upon which it is claimed that readmission or reinstatement is justified. The petition must be accompanied by a filing fee of \$200.00.

(d) **Hearing on petition.** The Board shall fix a time and place for the hearing of the Petition and shall give notice thereof to Bar Counsel and the Committee. Prior to the date of hearing on the petition, the Committee, Bar Counsel or any other person may file with the Board a typewritten or printed statement supporting or opposing the petition. The Board shall also cause an investigation to be made of the moral character and conduct of the petitioner during the period of disbarment or suspension. If the petition is one of reinstatement and the investigation discloses facts upon which a complaint for unprofessional conduct may be predicted, the Board shall refer the case to the Committee for filing of a Formal Committee Complaint in accordance with these rules.

APPENDIX II.

ROBERT G. NORTON (USB #5118)
Attorney for Appellant
275 East 2nd South, Suite 150
Salt Lake City, Utah 84111
(801) 359-8400

IN THE SUPREME COURT OF THE STATE OF UTAH

In Re:

RICHARD K. CRANDALL,

AFFIDAVIT OF APPELLANT
RICHARD K. CRANDALL

Case No. 880325

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

I, Richard K. Crandall being duly sworn upon my oath,
depose and say as follows:

1. I am the Appellant in the above entitled matter
and have personal knowledge of facts stated herein.

2. The conversations related in herein are as close
to the words that were spoken as possible and are without
embellishment. Further, these conversations as stated are based
upon a clear recollection in that the conversations and events
were significant to me at the time.

3. In May of 1987, I was engaged in the practice of
law with offices at 350 South 400 East, Salt Lake City, Utah. I
was admitted to practice in Utah in 1976. Throughout my
practice and particularly in May of 1987, my case load primarily
consisted of divorce cases. In April and May of 1987 I had

somewhere between 70 to 90 open active matters. Due to the nature of domestic practice, different files would be opened and closed daily. There would be daily court appearances, including orders to show cause for temporary restraining orders, and weekly trials. The clients were for the most part emotional, demanding and generally hard to please. Collection of fees was a constant problem.

4. On May 5, 1987 I was administratively suspended from the practice of law. On or around this date I called the Bar Office on at least two occasions and told them that it was my understanding that my bookkeeper had made the payment and would get it straightened out. The individual I spoke with at the Bar said they would double check their records. One of the conversations was with Stephen Hutchinson, the other individuals were unknown to me. Sometime thereafter, I either called back or someone called me and confirmed that the Bar showed no record of receiving the dues. I told the individual at the Bar, that I would immediately hand carry the dues together with the \$100.00 fine to the Bar Office. I was told it was too late for them to accept the dues without the Executive Committee's approval, and that I would have to submit a written request for acceptance. I was told when the next Executive Committee meeting would be held, and told to submit my dues and a written request prior to that meeting. Inasmuch as the meeting was several weeks away, I asked if the request could be submitted to the members of the Executive Committee for individual approval because of the urgency. I was

told that it could not be submitted in this manner. I was told this was a matter of procedure and that nothing could be done. At this point, I asked to speak to Bar Counsel and was either transferred to or was called back by Bar Counsel, Jo Carol Nesset-Sale. At this time, I stated to Ms. Nesset-Sale that the Administrative Suspension for failure to pay dues was causing serious problems with my practice, was hurting both me and my clients. Bar Counsel's response was that the Executive Committee would have to review the matter. I asked the Bar Counsel if I could appear and file pleadings in my existing matters. I stated to Bar Counsel that I was a solo practitioner specializing in highly emotional divorce cases. That I have daily court appearances including several trials a week and appearances on orders to show cause involving restraining orders, and that I had no associates to substitute for me. I then reviewed in detail my actual calender for the next several weeks with Bar Counsel and asked if there was someway I could partially be relieved from the suspension to handle to most immediately pressing matters until the next meeting of the Executive Committee. Bar Counsel told me there was no authority for Limited Appearances and added that I should not give advice, write letters, meet with clients, or bill time in the capacity of an attorney, or in any way hold myself out to be an attorney. I asked Bar Counsel what I should tell my angry clients. Bar Counsel responded that I should have submitted my dues on time and it was my own fault, and that there was nothing she could do. In response to her statement that I

should have submitted my dues on time, I stated that up until 1985 I had been with a firm whose office manager handled the submission of dues and that I had instructed my bookkeeper to pay the due prior going on vacation for two weeks and had, in any event, he tendered my dues this year on a date earlier that he did last year. Bar Counsel then cited the rule authorizing suspension for failure to pay dues and stated the only advice she could give me was to "go on vacation again." On or about July 9, 1987, I received a letter from Julie Smiley at the Bar Association referring the matter from the Executive Committee to the Board of Bar Commissioner's meeting on July 31, 1987 (See Exhibit 1). On August 5, 1987, I received the attached letter (See Exhibit 2) deferring the matter until the Board of Bar Commissioner's meeting on August 28, 1987.

4. Sometime in June my Secretary called in sick and never returned to work. On August 15, 1988 while I was in court helping another Attorney handle one of my former cases, my furniture and equipment was taken by a creditor without warning. On August 21, 1987 I appeared before the hearing panel in F-202, together with my Attorney, Bruce Cohne, on an Order to Show Cause why my probation in F-202 should not be revoked because I failed to file monthly reports. Appearing as Associate Bar Counsel was Christine Burdick. At this hearing I became emotional and tearfully stated to the panel and to Ms. Burdick, that my life was in a state of chaos, that the dues suspension had ruined my practice and that I was so overwhelmed by the effects of the dues

suspension that I literally didn't have the time or ability to summarize files that I was referring to other counsel. I also told the panel I had only a few files left. I presented a summary of these files. I stated directly to Christine Burdick, Associate Bar Counsel, that I felt the Bar had wrongfully delayed consideration of my tendering of dues and that this was in violation of the Bar Association's own Rules. The panel recommended suspension for six months retro active to the time of the dues suspension on May 5, 1987. My counsel, Mr. Cohne, volunteered to supervise my probation in F-202. Bar Counsel approved of Mr. Cohne without comment. Further, at this hearing I recall Bar Counsel mentioned nothing about there being any other formal or informal pending disciplinary matters.

6. Sometime in October, Mr. Cohne withdrew as my Attorney at the request of Bar Counsel, claiming that Mr. Cohne as the supervisor of my probation was in potential not actual conflict of interest position. Shortly thereafter, Bar Counsel scheduled hearing of a screening panels in F-239, F-276 on Nov. 2, 1987. The afternoon before or the morning of the hearing, I called Bar Counsel Christine Burdick and inquired as to the nature of the hearing. She told me that it was the hearing panel to recommend discipline in F-239 and F-276. She further stated that she was going to request one year suspension on each matter.

7. I told Associate Bar Counsel Burdick that I had just received the notice of hearing and notice that Mr. Cohne had been asked by Bar Counsel to withdraw as my counsel. I then

asked her to continue the matter for even a few days to allow me time to get a new lawyer and prepare for the hearing. She refused, stating that she would not continue the hearing since the screening panel had been notified and she had some difficulty finding a date when they all could appear anyway and that she wouldn't change the date. I stated that I would call all the members of panel myself and get a new date as quickly as possible and stated to Bar Counsel that given the proposed recommendation, I felt my request was not unreasonable. Bar Counsel responded that she had just sent me a letter giving me notice of an informal complaint she had received from John Clay, and that she was going to seek disbarment on that matter. I then asked Bar Counsel to at least present my request for a continuance because I could not appear. The conversation was terminated. This is the only conversation I have ever had with Bar Counsel, other than my prior conversation with Ms. Nessett-Sale as set forth above.

Finally, I cannot over emphasize the impact the "Administrative Suspension" had on my practice and my personal life. This was particularly aggravated by the repeated delays in deferring consideration of my request for re-enrollment, first to the Executive Committee meeting, then to the Board meeting at the end of July, then finally to the Board meeting at the end of August, all totally, without explanation of any kind. This created a situation where I continued to defer those matters that could be continued or deferred until after the time I expected to

be re-enrolled, only to find re-enrollment had been again deferred. This was an impossible situation causing matters to be carried forward repeatedly. These delays caused complete loss of creditability with clients, the courts, other attorneys, and my creditors who were typically paid from my now non-existent cash flow. In short, nobody would believe that the Bar would require me to remain so long on Administrative suspension for failure to pay dues.

In short, if I had known in May of 1987 that my request for re-enrollment would not be considered until the end of August, I would have immediately withdrawn from all my files, closed my office, let my secretary go, and tried to find another job.

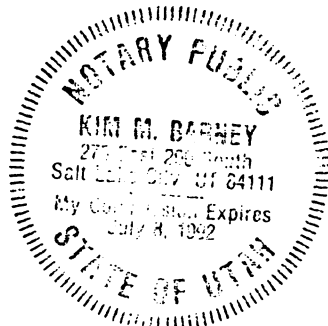


RICHARD K. CRANDALL

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

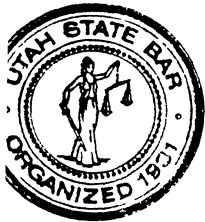
Before me this day personally appeared RICHARD K. CRANDALL, who, being first duly sworn, deposed and said that he is the person who executed the foregoing AFFIDAVIT, and that the facts herein stated are true.

SUBSCRIBED AND SWORN to before me this 23rd day of February, 1989.





NOTARY PUBLIC FOR THE STATE OF UTAH
My commission expires July 8, 1992



Ken F. Hutchinson
Executive Director
Barbara R. Bassett
Associate Director

Utah State Bar

425 East First South • Salt Lake City Utah 84111
Telephone: (801) 531-9077 • (WATS) 1-800-662-9054

July 8, 1987

Mr. Richard K. Crandall
350 South 400 East, #114
Salt Lake City, Utah 84111

Dear Mr. Crandall:

As we discussed during our conversation of last week, I submitted your petition to the Executive Committee of the Board of Commissioners to the Utah State Bar requesting that you be reinstated after suspension of non-payment of license fees. The Executive Committee felt it would be necessary to discuss the matter with the full Commission. Their next full meeting is scheduled for July 31, 1987.

As I explained previously, there is no conditional license or Rule that allows you to practice until this matter has been resolved. Therefore, please be aware that under our Rules you are not eligible to practice law in the State of Utah.

If you have questions, please feel free to contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Julee G. Smilley".

Julee G. Smilley
Admissions Administrator

Board of Commissioners

Art L. Dart
President

Ed L. Martineau
President Elect

Ans. Q. Chamberlain

James Z. Davis

Amela T. Greenwood

Lewart M. Hanson, Jr.

Donald B. Holbrook

Jackson B. Howard

Norman S. Johnson

Robert M. Kasting

Donald J. Low

APPELLANT'S EXHIBIT 1



Utah State Bar

425 East First South • Salt Lake City, Utah 84111
Telephone: (801) 531-9077 • (WATS) 1-800-662-9054

F. Hutchinson
Director

R. Bassett
Director

August 4, 1987

Mr. Richard K. Crandall
350 South 400 East, #114
Salt Lake City, Utah 84111

CERTIFIED MAIL

Dear Mr. Crandall:

Your petition for reinstatement to the bar was presented to the Board of Commissioners at their meeting on July 31, 1987. I regret to advise you that they have deferred action on your petition and may address the issue at the next scheduled meeting on August 28, 1987.

I need to reiterate that you should not practice law in Utah until that reinstatement is complete. There is no conditional license that would allow you to practice until this matter is settled.

If you have questions, please feel free to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Julie G. Smalley".

Julie G. Smalley
Admissions Administrator

of Commissioners
Part

Martineau
ect

Chamberlain

L. Davis

T. Greenwood

M. Hanson, Jr.

B. Holbrook

B. Howard

S. Johnson

Kasting

J. Low

Stirba

APPELLANT'S EXHIBIT 2

Re: Notice of Suspension


Mr. Richard K. Crandall
350 South 400 East #114
Salt Lake City, Utah 84111

Dear Mr. Crandall:

Pursuant to the provisions of Rule XX of the Revised Rules of the Utah State Bar, you have been dropped from the roll of attorneys licensed to practice in Utah by reason of your failure to pay your 1987 license fee. Notice of this suspension has also been provided to all courts within the state.

A copy of Rule XX, covering suspensions is enclosed for your information. It outlines the procedure for reinstatement.

Sincerely,


Stephen F. Hutchinson
Executive Director

P 001 808 626

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

Richard K. Crandall	
Street and No	
P O, State and ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

MAY 04 1987

PS Form 3800, Feb. 1982

DOMESTIC RETURN RECEIPT

July 1983 447-845

Available. Consult Postmaster for fees and for service(s) requested.

1. ☐ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:
Mr. Richard K. Crandall
350 South 400 East #114
Salt Lake City, UT 84111

4. Type of Service:
☒ Registered
☐ Certified
☐ Insured
☐ COD
☐ Express Mail

Article Number
P001 808 626

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee
X

6. Signature - Agent
X

7. Date of Delivery
X

8. Addressee's Address (ONLY if requested and fee paid)
SALT LAKE CITY, UT 84111

MINUTES
UTAH STATE BAR COMMISSION MEETING
May 15, 1987
Carbon Country Club
Price, Utah
8:30 a.m.

Present were: Bert L. Dart, President, presiding; Reed L. Martineau, President Elect; Anne M. Stirba, Hans Q. Chamberlain, Stewart M. Hanson, Pamela T. Greenwood, Kent M. Kasting, Jackson B. Howard Commissioners; Robin Riggs, Young Lawyers Representative; Dean Edward Spurgeon, Ex-Officio; Stephen F. Hutchinson, Executive Director; Barbara R. Bassett, Associate Director; Christine Burdick, Associate Bar Counsel;

Excused were: James Z. Davis, Paul M. Durham, Donald B. Holbrook, Gordon J. Low, Commissioners; Dean Bruce Hafen, Ex-Officio; Norman S. Johnson, Past President;

Meeting commenced at 9:00 a.m.

ITEM I Minutes of the April 24 meeting of the Bar Commission were reviewed and amended on page 4 thereof by deleting the last sentence on the page. Motion to approve the minutes as amended by Commissioner Stirba, second by President Elect Martineau. Carried unanimously.

ITEM II Minutes of the May 5 Executive Committee meeting were reviewed for informational purposes. President Dart commented on the Law Day Committee activity, the national mock trial competition, adding that the Bar Foundation had stepped in to fund the additional activity.

ITEM III Executive Director's Report

Executive Director Hutchinson referred the members to his written report highlighting the following areas:



F Hutchinson
Director
R Bassett
Executive Director

Utah State Bar

425 East First South • Salt Lake City Utah 84111
Telephone (801) 531-9077 • (WATS) 1-800-662-9054

July 8, 1987

Mr. Richard K. Crandall
350 South 400 East, #114
Salt Lake City, Utah 84111

Dear Mr. Crandall:

As we discussed during our conversation of last week, I submitted your petition to the Executive Committee of the Board of Commissioners to the Utah State Bar requesting that you be reinstated after suspension of non-payment of license fees. The Executive Committee felt it would be necessary to discuss the matter with the full Commission. Their next full meeting is scheduled for July 31, 1987.

As I explained previously, there is no conditional license or Rule that allows you to practice until this matter has been resolved. Therefore, please be aware that under our Rules you are not eligible to practice law in the State of Utah.

If you have questions, please feel free to contact our office.

Sincerely,

Julee G. Smilley
Admissions Administrator

Board of Commissioners
L. Dart
J. L. Martineau
S. Q. Chamberlain
E. Z. Davis
M. T. Greenwood
M. Hanson, Jr.
B. Holbrook
B. Howard
S. Johnson
M. Kasting



Utah State Bar

425 East First South • Salt Lake City, Utah 84111
Telephone (801) 531-9077 • (WATS) 1-800-662-9054

Hutchinson
for
Bassett
for

August 4, 1987

Mr. Richard K. Crandall
350 South 400 East, #114
Salt Lake City, Utah 84111

CERTIFIED MAIL

Dear Mr. Crandall:

Your petition for reinstatement to the bar was presented to the Board of Commissioners at their meeting on July 31, 1987. I regret to advise you that they have deferred action on your petition and may address the issue at the next scheduled meeting on August 28, 1987.

I need to reiterate that you should not practice law in Utah until that reinstatement is complete. There is no conditional license that would allow you to practice until this matter is settled.

If you have questions, please feel free to contact our office.

Sincerely,

Julee G. Smilley
Admissions Administrator

Commissioners
rt

artineau

hamberlain

Davis

Greenwood

Hanson Jr

Holbrook

Howard

Johnson

asting

Low

SUPREME COURT OF UTAH

APR 8 1987

STATE OF UTAH

SALT LAKE CITY, UTAH

April 6, 1987

OFFICE OF THE CLERK

Jo Carol Nasset-Sale
Utah State Bar
425 East First South
Salt Lake City, UT 84111

Utah State Bar,
Plaintiff,

v.

No. 870079

Richard K. Crandall,
Defendant.

THIS DAY, The recommendation of the Utah State Bar disciplinary action of R. K. Campbell is approved in its entirety.

Geoffrey J. Butler, Clerk

RECEIVED DEC - 2

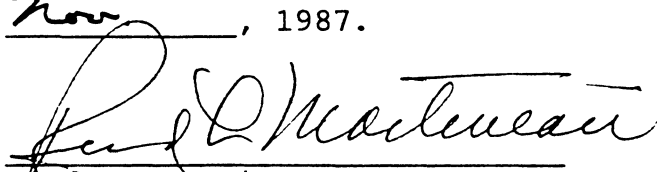
IN THE SUPREME COURT OF
THE STATE OF UTAH

In Re:	)	RECOMMENDATION OF THE
	)	BOARD OF COMMISSIONERS
RICHARD K. CRANDALL)	
	)	F-239

The above-captioned matter having come before the Board of Commissioners at their regular meeting on the 20th day of November, 1987, and the Board having reviewed the Findings of Fact, Conclusions of Law and Recommendation dated November 13, 1987, and being fully advised makes the following recommendation:

That the above-referenced Findings, Conclusions and Recommendation of the Hearing Panel of the Ethics and Discipline Committee be and it hereby is adopted in its entirety.

DATED this 20th day of Nov, 1987.


Reed L. Martineau
President

RECEIVED DEC -

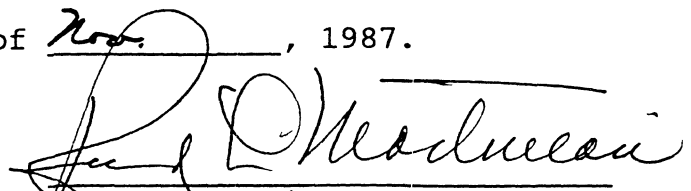
IN THE SUPREME COURT OF
THE STATE OF UTAH

In Re:	)	RECOMMENDATION OF THE
	)	BOARD OF COMMISSIONERS
RICHARD K. CRANDALL)	
	)	F-276

The above-captioned matter having come before the Board of Commissioners at their regular meeting on the 20th day of November, 1987, and the Board having reviewed the Findings of Fact, Conclusions of Law and Recommendation dated November 13, 1987, and being fully advised makes the following recommendation:

That the above-referenced Findings, Conclusions and Recommendation of the Hearing Panel of the Ethics and Discipline Committee be and it hereby is adopted in its entirety.

DATED this 20th day of Nov., 1987.


Reed L. Martineau
President

REME COURT OF UTAH
STATE OF UTAH
SALT LAKE CITY, UTAH
December 21, 1987

OFFICE OF THE CLERK

Jo Carol Nesset-Sale
Utah State Bar
425 East 100 South
Salt Lake City, UT 84111

In Re:

No. 870460

Richard K. Crandall,
F-276.

Utah State Bar's order of discipline, having been considered, it is ordered that the same be, and hereby is, approved.

Geoffrey J. Butler, Clerk

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

December 21, 1987

OFFICE OF THE CLERK

Richard K. Crandall
Attorney at Law
547 West 3900 South
Salt Lake City, UT 84115

In Re:

No. 870079

Richard K. Crandall,
F-202.

Utah State Bar's order of discipline, having been considered, it is ordered that the same be, and hereby is, approved.

Geoffrey J. Butler, Clerk

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

December 21, 1987

OFFICE OF THE CLERK

Richard K. Crandall
Attorney at Law
547 West 3900 South
Salt Lake City, UT 84115

In Re:

No. 870459

Richard K. Crandall,
F-239.

Utah State Bar's order of discipline, having been considered, it is ordered that the same be, and hereby is, approved. See attached Order.

Geoffrey J. Butler, Clerk

MINUTES
UTAH STATE BAR COMMISSION MEETING
October 2, 1987
Alta, Utah

Present were: Reed L. Martineau, President
presiding, Kent M. Kasting,
President-Elect, Gordon L. Low,
Randy L. Dryer, Donald B. Holbrook,
Pamela T. Greenwood, Jackson B.
Howard, Hans Q. Chamberlain, James
Z. Davis, Commissioners; Bert L.
Dart, Past President, Norman S.
Johnson, ABA Delegate, Stewart
Hinckley, Young Lawyer's Section
Representative, Ex-Officio; Stephen
F. Hutchinson, Executive Director,
Barbara Bassett, Associate Director,
Jo Carol Nasset-Sale, Bar Counsel,
Christine Burdick, Associate Bar
Counsel. Excused: Anne M. Stirba,
Commissioner.

Meeting commenced at 8:35 a.m.

ITEM I Minutes of the August 28 meeting
of the Bar Commission were reviewed.
With regard to the judicial item,
(ACTION: it was reported that President
KASTING) Martineau and President-Elect Kasting
had conferred with the Supreme Court
expressing the Bar Commission's
concerns and that President-Elect
Kasting would follow up with Mr.
Vickery. Motion to approve the minutes
by Commissioner Chamberlain, second
by Commissioner Greenwood. Carried
unanimously.

ITEM II Minutes of the Special Bar Commission
meeting of September 1 were reviewed.
Motion to approve as prepared by
Commissioner Dryer, second by
Commissioner Holbrook. Carried
unanimously.

Counsel who referred the Commissioners to the written report.

Formal Complaints:

F270: Paul Landis, discipline by consent. Motion to approve the discipline proposed by Commissioner Greenwood, second by Commissioner Dryer. Carried unanimously.

F222: Motion to approve the action of Bar Counsel in withdrawing the complaint and that an apology letter be sent by Commissioner Holbrook, second by President-Elect Kasting. Carried unanimously.

F202: Richard Crandall. Recusals by President Martineau, President-Elect Kasting and Commissioner Howard. Discussion followed regarding the costs involved in appointment of a probation supervisor. Motion to approve the recommendation conditioned on Mr. Cohne electing to serve either as probation supervisor or as respondent's counsel and that respondent consent to the arrangement and election by Commissioner Hanson, second by Commissioner Dryer. Carried unanimously.

F272: Stanley Balif. Bar Counsel's request for authority to petition the Supreme Court for interim suspension. Motion to approve by President-Elect Kasting, second by Commissioner Chamberlain. Carried unanimously.

Ms. Burdick presented a progress report on the backlog of disciplinary cases.

Private Reprimands

(0036) Motion to approve by Commissioner Greenwood, second by Commissioner Dryer. Carried with Commissioner Hanson abstaining.

(0078) Motion to approve by Commissioner Greenwood, second by President-Elect Kasting. Carried unanimously.



Carol Nessel-Sale
Counsel

Office of Bar Counsel

425 East First South • Salt Lake City, Utah 84111
Telephone: (801) 531-9077

October 5, 1987

Mr. Bruce G. Cohne
66 Exchange Place
Salt Lake City, Utah 84111

Re: In Re Richard K. Crandall, F-202

Dear Mr. Cohne:

This is to confirm our telephone conversation of October 5, 1987. As I indicated to you, the Board of Bar Commissioners conditionally approved the Order On Order To Show Cause and Recommendation of Discipline in the above-referenced matter. The Board approved the Recommendation if you will withdraw as counsel of Mr. Crandall. The Board believes an inherent conflict of interest exists with your acting as probation supervisor and counsel, particularly with the potential of your being a witness in subsequent proceedings.

After you have had an opportunity to communicate with Mr. Crandall, please advise. If the above is not acceptable, I will need to place the matter on the Board's agenda for their October 23, 1987, meeting.

Thank you.

Very truly yours,

Christine A. Burdick
Associate Bar Counsel

CAB/jw

BEFORE THE BOARD OF COMMISSIONERS
OF THE UTAH STATE BAR

In Re:	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND
RICHARD K. CRANDALL	)	RECOMMENDATION
	)	F-276

This matter having come on for hearing pursuant to notice on November 2, 1987, before a Hearing Panel of the Ethics and Discipline Committee of the Utah State Bar, comprised of George Speciale, Chairman, Paul Kunz and Stanford Darger, at the Utah State Bar Center and the Ethics and Discipline Committee being represented by Associate Bar Counsel, Christine A. Burdick, and the Respondent, Richard K. Crandall, not being present in person or through counsel, and the Hearing Panel having reviewed the file, and having heard arguments presented, and good cause appearing, makes the following Findings, Conclusions and Recommendation:

FINDINGS OF FACT

1. Respondent was served with the Formal Complaint and Summons in the above-captioned matter on September 8, 1987.
2. The Default Certificate was entered herein on September 28, 1987; pursuant to Rule XI(d) of the

Procedures of Discipline of the Utah State Bar, the allegations of the Formal Complaint are deemed admitted as follows:

a. In or about April 1986, Sally McCormick retained Respondent to draft a legal separation agreement and initiate and finalize a divorce action, paying to Respondent a retainer in the sum of \$1,500.00.

b. In or about August and September of 1986, Respondent drafted and revised a settlement agreement for the parties' signature.

c. In or about August 1986, Respondent represented to Ms. McCormick that a divorce complaint had been filed.

d. In or about August 1986, Ms. McCormick advised Respondent that she was being transferred to California in the near future.

e. From September to the time Ms. McCormick filed her complaint in the Office of Bar Counsel on or about April 21, 1987, Respondent initiated no contact with the Complainant.

f. From September 1986 to April 1987, Respondent failed to return numerous phone calls made to him by Ms. McCormick and failed to keep a scheduled appointment in January 1987 with Ms. McCormick.

g. Respondent continually represented to Ms. McCormick that the divorce action was pending and that upon

filing various pleadings and motions, the divorce could be finalized.

h. Respondent failed to file Ms. McCormick's divorce complaint until April 7, 1987, when said divorce complaint was filed with the Third Judicial District Court of the State of Utah as Case No. D-871370.

i. On or about March 29, 1987, Ms. McCormick advised Respondent that she intended to initiate a complaint with the Office of Bar Counsel and requested a refund of the unused portion of her retainer.

j. Respondent represented that he would return the unused portion of her retainer in the sum of \$300.00; to this date, Respondent has not returned any monies to Ms. McCormick.

k. Ms. McCormick has now lost residency in Utah for purposes of the divorce action.

l. Respondent failed to respond to the Notice of Complaint filed or the Screening Panel of the Ethics and Discipline Committee of the Utah State Bar and failed to appear before said Screening Panel convened to consider said Notice of Complaint.

Based on the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. Respondent's failure to file the divorce complaint on behalf of his client for a period of one year from the

time he was retained constitutes an unreasonable delay in performing legal services in violation of Canon 6, DR 6-101(A)(3) of the Revised Rules of Professional Conduct of the Utah State Bar.

2. Respondent's failure to file the divorce complaint on behalf of his client until after the client had moved to California and his failure to complete the divorce action as represented constitutes a failure to carry out a contract for legal services in violation of Canon 7, DR 7-101(A)(2) of the Revised Rules of Professional Conduct of the Utah State Bar.

3. Respondent knew or should have known that his failure to timely file the divorce complaint would and did compromise the client's complaint for divorce in Utah, which constitutes conduct intentionally prejudicing and/or damaging the client in violation of Canon 7, DR 7-101(A)(3) of the Revised Rules of Professional Conduct of the Utah State Bar.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel makes the following:

RECOMMENDATION OF DISCIPLINE

Aggravation:

1. Respondent's conduct is an amplification of the misconduct involved in Formal Complaint F-202 for which Respondent was suspended from the practice of law for a period of six months.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order of Discipline was mailed certified mail return receipt requested to Stanley S. Adams, Attorney at Law, 807 East South Temple #101, Salt Lake City, Utah 84103 on this _____ day of _____, 1987.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Recommendation was mailed to Richard K. Crandall, 547 West 3900 South, Salt Lake City, Utah 84115 on this 2nd day of December 1987.

Wendy Johnson

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Recommendation was mailed to Richard K. Crandall, 547 West 3900 South, Salt Lake City, Utah 84115 on this 2nd day of December, 1987.

Wendy Johnson

2. Respondent shall pay prior to reinstatement any and all costs incurred by the Utah State Bar in the various proceedings held in connection with the above-captioned matter.

DATED this 13 day of November, 1987.

George D. Spiale
George Spiale, Chairman
Hearing Panel of the Ethics
and Discipline Committee

CERTIFICATE OF MAILING

I hereby certify that the foregoing Findings, mailed certified mail to K. Crandall, 547 West 84115 on this 2nd

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.	
1. <input checked="" type="checkbox"/> Show to whom delivered, date, and addressee's address.	2. <input type="checkbox"/> Restricted Delivery.
3. Article Addressed to: <i>Richard Crandall</i> <i>547 W. 3900 South</i> <i>S. C. Utah 84115</i>	4. Article Number: <i>P0011 808 555</i>
Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> COD <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail	
ANY Signature or Signature of Addressee? <input type="checkbox"/> address and DATE DELIVERED	
5. Signature of Addressee: <i>[Signature]</i>	6. Signature of Agent: <i>[Signature]</i>
7. Date of Delivery: <i>12/4/87</i>	
PS Form 3811, Feb. 1986	

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CERTIFIED MAIL
VERAGE PROVIDED
ATIONAL MAIL
(reverse)

Crandall
547 W. 3900 South
84115

FINDINGS OF FACT -

IN THE SUPREME COURT

STATE OF UTAH

IN RE:

RICHARD K. CRANDALL

)
)
)

ORDER OF DISCIPLINE:

SUSPENSION

F-276

Having reviewed the record in the above-entitled matter pursuant to Rule XIV of the Procedures of Discipline of the Utah State Bar, and having given due consideration to the nature of the misconduct and factors in attendant circumstances of Richard K. Crandall, the Court hereby approves the recommendation of the Board of Bar Commissioners and adopts it as its own and incorporates it by reference into this order.

For having neglected a legal matter entrusted to him (in violation of Canon 6, DR 6-101(A)(3), having failed to carry out a contract for legal services (in violation of Canon 7, DR 7-101(A)(2), and intentionally prejudiced and/or damaged his client (in violation of Canon 7, DR 7-101(A)(3), as they are detailed in the Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED:

1. That Richard K. Crandall be suspended from the

practice of law for six (6) months and a day, said period to run consecutively to the period of suspension recommended in F-239;

2. That he pay restitution of \$15,000.00 to Sally McCormick on or before February 1, 1988, with interest paid from November 2, 1987, at a rate of 12%;


3. That if restitution is not made as ordered, an Order to Show Cause shall issue requiring Mr. Crandall to appear before a Hearing Panel to show cause why an additional sanction should not be imposed;

4. That Mr. Crandall shall pay the costs incurred by the Utah State Bar in its prosecution of this matter and that no petition for reinstatement shall be favorably considered unless the costs and restitution are paid.

The effective date of this suspension shall be the day after the (6) six month and (1) one day suspension period imposed in F-239.

Dated this 21st day of December, 1987.

By the Court:



Gordon R. Hall

Revised Rules of Professional Conduct of the Utah State Bar:
A lawyer shall not neglect a legal matter entrusted to him;
and

3. Respondent violated Canon 1, DR 1-102(A)(6) of the Rules of Professional Conduct of the Utah State Bar: A lawyer shall not engage in any other conduct that adversely reflects on his ability to practice law.

ORDER OF DISCIPLINE

1. Respondent shall be placed on Probation for one (1) year commencing upon the date of entry of this order and subject to the following conditions:

A. Joseph Palmer, an attorney in good standing of the Utah State Bar, and recommended by the Board of Commissioners of the Utah State Bar, shall serve as a probation supervisor to monitor Respondent's activities during the Probation period.

B. Respondent shall file a written status report with his probation supervisor within thirty (30) days of the Utah Supreme Court's approval of these Recommendations. The status report shall include cumulative index, listing all of Respondent's cases which are not completed and not closed. Respondent shall complete a detailed status report on each case which is not completed and not closed. Respondent and his probation supervisor shall discuss this Probation, clarify any ambiguities and arrange a date that the status reports are due each month and/or bi-monthly.

C. Respondent shall meet with and file the status report with his probation supervisor every two (2) weeks for the first two (2) months of the Probation.

D. During the remaining ten (10) months of the Probation, Respondent shall meet with and file the status reports with his probation supervisor every thirty (30) days.

E. Respondent and the probation supervisor shall report to Bar Counsel every thirty (30) days on the progress of the Probation.

F. Respondent shall reimburse the Utah State Bar the amount of its costs incurred in pursuing this matter within thirty (30) days entry of this order.

2. Respondent's probation supervisor shall file an affidavit with Bar Counsel within ten (10) days of Respondent's breach of any term of Probation or a breach of any of the specific terms agreed upon between Respondent and the probation supervisor.

3. If Respondent breaches any term of this Probation Order or the specific terms agreed upon between Respondent and his probation supervisor, the Hearing Committee Panel will reconvene to consider appropriate courses of action.

DATED this _____ day of _____, 1987.

By the Court:

Gordon R. Hall

participation by Sections in CLE programs, and discussed the affirmative and negative aspects of financial participation and the use of funds by Sections. The proposed policy statement is to be amended to provide for administrative appeals to the Bar Commission and for further clarification in the area of joint programs with outside entities.

(Action Martineau,
Kasting)

- b. Staff Travel: Summary was presented and is appended to these minutes.
- c. ABA Conference on Professionalism: Mr. Hutchinson recommended participation in the upcoming ABA conference on professionalism in Denver. Motion to approve attendance by President Elect Martineau or Commissioner Kasting by President Elect Martineau, second by Commissioner Greenwood. Carried unanimously.
- d. Suspensions: Mr. Hutchinson presented a list of attorneys who were suspended for non payment of dues and petitions of two attorneys who had requested reinstatement and had submitted the appropriate fees. Motion to approve the reinstatements pursuant to the petitions by Commissioner Chamberlain, second by President Elect Martineau. Carried unanimously. Motion to authorize the Executive Committee to approve reinstatements of petitioning attorneys suspended for non payment of license fees by Commissioner Hanson, second by Commissioner Kasting. Carried unanimously.
- e. Committees and Sections: Mr. Hutchinson presented a list of proposed Committee Chair assignments as prepared by the Committee on Committees. President Elect Martineau requested input from the Commissioners regarding their respective liaisons. Motion to approve the appointment of the Committee Chairs as recommended by the Committee by Commissioner Kasting, second by Commissioner Chamberlain. Carried unanimously.